Matter of Urena v New York City Hous. Auth.
2014 NY Slip Op 30335(U)
January 31, 2014
Supreme Court, New York County
Docket Number: 401890/2013
Judge: Cynthia S. Kern
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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 401890/2013

URENA, AIDA

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

PART _____

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

is decided in accordance with the annexed decision.

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: 1/31/14

_____, 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 55

----------x

In the Matter of the Application of

AIDA URENA,

Petitioner,

Index No. 401890/2013

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

DECISION/ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

----------x

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	
Exhibits.....	3

Petitioner brings this petition seeking to challenge respondent the New York City Housing Authority's ("NYCHA") decision dated June 27, 2013, denying petitioner's application to vacate the Hearing Officer's decision dated October 6, 2011. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. Aida Urena (the "tenant") was the tenant of record of apartment 5A at 64-66 Essex Street in Seward Park Extension Houses, a public housing development owned and operated by NYCHA. Pursuant to petitioner's lease with NYCHA, rent

was "due and payable the first day of each month or at such other day each month as [NYCHA] may decide." The lease further provided that NYCHA may terminate petitioner's tenancy based on her failure to make payments due under the lease.

For eight months between March 2010 and December 2010, petitioner failed to pay rent when it became due. Thus, in February 2011, after management offered petitioner opportunities to discuss her failure to timely pay rent, NYCHA brought termination of tenancy charges against petitioner for chronic rent delinquency. The notice informed petitioner that NYCHA had scheduled an administrative hearing for March 16, 2011 and that she was entitled to be represented by counsel or another representative of her choice. Thereafter, NYCHA sent another notice informing petitioner that it had amended the charges to update the period of petitioner's rent delinquency and that the hearing had been adjourned to April 21, 2011. On April 21, 2011, petitioner entered into a stipulation with NYCHA adjourning her hearing to May 26, 2011.

On May 26, 2011, petitioner did not appear for her hearing and by written decision dated June 2, 2011, the Hearing Officer sustained the chronic rent delinquency charge on default and concluded termination of tenancy was warranted. By written determination of status, NYCHA approved the Hearing Officer's decision and disposition in the proceeding finding petitioner ineligible for continued occupancy.

Nearly three months later, on September 9, 2011, petitioner submitted an application to open her default, which was subsequently denied by a Hearing Officer on October 6, 2011 on the ground that petitioner failed to provide an explanation for failing to appear at the hearing or set forth a meritorious defense to the chronic rent delinquency charges. Thereafter, on October 24, 2012, petitioner commenced an Article 78 proceeding to challenge NYCHA's determination. By

decision and order dated January 25, 2013, the Honorable Justice Arlene Bluth denied the petition and dismissed the Article 78 proceeding on the ground that it was time barred as it was brought "more than eight months after the statute of limitations expired."

In March 2013, petitioner's housing advocate, Penelope Hernandez ("Hernandez") submitted a request to NYCHA's hearing office to vacate the Hearing Officer's October 2011 decision. Hernandez argued that the October 2011 decision should be vacated on the grounds that (1) NYCHA should have referred petitioner for a mental services evaluation prior to the hearing because " there was a minor mentally disabled child and a mentally disabled 19 year-old child in the household;" and (2) petitioner was not mentally competent at the time of her default as she allegedly "has a history of treatment for Depressive Disorder that dates back to 2004" and "[s]he is currently receiving mental health services at our outpatient mental health clinic." NYCHA objected to petitioner's request to vacate the Hearing Officer's decision on the grounds that it had no knowledge of petitioner's mental impairment which would require the appointment of a Guardian Ad Litem ("GAL), the mental impairment of petitioner's children is not relevant to the proceeding and petitioner continues to owe rent.

On June 27, 2013, the Hearing Officer denied petitioner's application. In issuing its denial, the Hearing Officer found that:

> There was no sufficient proof submitted to show that the Tenant was incapable of understanding the nature of the administrative proceeding and was unable to adequately protect and assert her rights and interests at the time of the hearing. The mental competence of the Tenant's children does not require the appointment of a Guardian Ad Litem in this administrative proceeding. Although the Tenant received income and according to University Settlement Society has the ability to pay the rent, she still owes $2,964.58 at the rate of $406.60 per month based on the ledger card attached to NYCHA's opposition papers.

Petitioner now brings the instant Article 78 proceeding seeking to challenge the Hearing Officer's denial of her request to vacate the Hearing Officer's decision dated October 6, 2011, which denied petitioner's application to open her default and termination of her tenancy.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); *see Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974) ("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell,* 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that the Hearing Officer's decision dated June 27, 2013-*, denying petitioner's application to vacate the Hearing Officer's decision dated October 6, 2011 was made on a rational basis. In December 2008, NYCHA adopted procedures, described in GM-3742 Revised, for assessing the mental competence of certain tenants whose tenancies may be subject to termination. *See Blatch v. Hernadez*, Case No. 97-CV-3918 (S.D.N.Y.) (LTS). Pursuant to the procedures, a tenant who is mentally competent is able to "[u]nderstand the nature of the proceedings" and "[a]dequately protect and assert his/her rights

and interests in the tenancy." Additionally, the procedures direct that:

> When commencing a termination of tenancy proceeding, the Housing Manager or designee should refer the matter to the NYCHA Social Services Department (Social Services) for an evaluation of mental competence if [s]he knows, through personal knowledge, documents in the tenant file, or information conveyed to the Housing Manager or designee by others, that the tenant (signatory to the lease) meets any of the following criteria:
>
> 1. Within the past year, the tenant has been hospitalized for a mental illness
>
> 2. Within the past year, the tenant has been represented by a Guardian Ad Litem because of a mental condition
>
> 3. Within the past year, a mental health professional has declared in writing that the tenant has a mental disease or defect that may render him or her incapable of participating in legal proceedings . . .
>
> 4. Within the past year, the tenant has received services from Adult Protective Services (APS) because of a mental condition. If the tenant receives services from APS solely for a physical condition, the Housing Manager or designee shall not refer the tenant for a mental competence evaluation.
>
> 5. The tenant currently receives SSI or Social Security for a mental disability
>
> 6. The tenant declared on his/her most recent NYCHA form 040.297, *Occupant's Affidavit of Income*, that (s)he has a mental disability, or
>
> 7. Within the past year the tenant has exhibited seriously confused or disordered thinking

Here, petitioner failed to present any evidence to the Hearing Officer demonstrating that she satisfied any of the criteria listed above to trigger a mental competency evaluation prior to her termination hearing, let alone that management had any such information at the time it commenced termination proceedings. In her application to vacate the Hearing Officer's October 2011 decision, Hernandez, on behalf of petitioner, argued that petitioner should have been

referred to NYCHA's Social Services Department as there was "a minor mentally disabled child and a mentally disabled 19 year-old child in the household" and annexed documents pertaining to the children's disability records. However, the mental status of petitioner's children is immaterial as to NYCHA's duty to refer petitioner for a mental competency evaluation prior to termination as the applicable procedures only instruct the Property Manager to refer a tenant for a Social Services evaluation if the Property Manager had reason to believe the *tenant* has a mental illness that may render her mentally incompetent. It is undisputed that petitioner is the tenant of the building and not her children. Thus, the Hearing Officer rationally determined that mental status of petitioner's children was not sufficient to trigger a mental competency screening of petitioner and, moreover, did not demonstrate that petitioner herself could not understand the nature of the administrate proceeding. Simply put, NYCHA's decision to deny petitioner's application to vacate the Hearing Officer's decision dated October 6, 2011 was justified as petitioner failed to present NYCHA with any evidence that it had knowledge of her alleged mental impairment at the time of the termination hearing or that she was mentally incompetent at the time of her default. Thus, NYCHA's determination that petitioner failed to produce sufficient proof that she was incapable of understanding the nature of the administrative proceeding and was unable to adequately protect and assert her rights and interest at the time of the hearing was rational.

To the extent that petitioner annexes several documents to her instant petition allegedly demonstrating her ongoing struggle with mental illness, the court cannot consider these documents as they were not part of the administrative record. *See Featherstone v. Franco*, 95 N.Y.2d 550, 554 (2000) ("judicial review of administrative determination is confined to the facts

and record adduced before the agency").

Accordingly, petitioner's request for relief under Article 78 of the CPLR is denied. The petition is hereby dismissed in its entirety. This constitutes the decision, order and judgment of the court.

Dated: 1/31/14

Enter: _____
J.S.C.