

Albany Housing Authority.

Petitioner,

INDEX NO. AHA 06-
DECISION and ORDER

-against-

Respondents.

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HON. GARY F. STIGLMEIER

Respondent moves for an order dismissing this summary proceeding based upon his allegation that while the federal regulations prohibit a Public Housing Authority (hereinafter "PHA") from renting to a tenant who is subject to a lifetime registration requirement, those regulations do not allow for the eviction of a tenant on those grounds. This summary proceeding is based upon 24 CFR 5.856, which requires all PHAs to prohibit the admission of persons subject to a lifetime registration requirement under a state sex offender registration program. This regulation requires the PHA to perform the necessary criminal history background checks and to contact national and state sex offender registry agencies to determine an applicant's suitability for Federally-assisted housing. In accordance with this law, any individual who is a sex offender subject to a lifetime registration requirement under state law shall not be admitted to Federally-assisted housing.

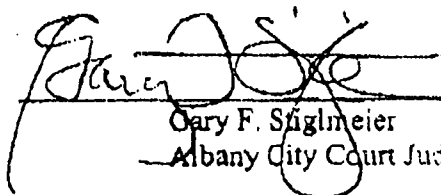
In New York State the law was recently amended, subjecting level 2 sex offenders to a lifetime registration requirement. Respondent admits that he has been adjudicated a level 2 sex offender and

is therefore subject to register. However, neither the statutory nor regulatory requirements specifically address the issue of sex offenders currently living in Federally-assisted housing. HUD, however, did address the issue in section IX of a Notice (# 2002-22) it issued on October 29, 2002, which stated that "households already living in Federally-assisted housing units are not subject to the provisions in the regulations at 24 CFR 5.856."

The Court defers to HUD's interpretation of the applicable federal regulation, and determines it to be dispositive of the issue. As such, respondent's motion to dismiss this summary proceeding is granted.

So ordered.

Dated at Albany, New York
December 11, 2006



Gary F. Siglmeier
Albany City Court Judge