

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED

OCT 20 2011

LOS ANGELES  
SUPERIOR COURT

**[REDACTED]** )  
Petitioner )  
 )  
vs )  
 )  
THE HOUSING AUTHORITY OF )  
THE COUNTY OF L.A., ET AL )  
Respondents )  
\_\_\_\_\_ )

CASE NO. **[REDACTED]**

**COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON  
OCTOBER 20, 2011**

Petitioner **[REDACTED]** seeks a writ of administrative mandate to set aside Respondents Housing Authority of the County of Los Angeles and Sean Rogan (collectively "Housing Authority") decision to terminate her Section 8 benefits. Specifically, Petitioner asserts that the Housing Authority abused its discretion and violated due process when it terminated her housing subsidy based on her failure to timely provide a criminal docket sheet, as ordered.

After considering the parties' briefs and matters properly judicially noticed,<sup>1</sup> having heard argument and having taken the matter under submission, the Court rules as follows:

**Summary of the Case**

Section 8 is a rent subsidy program under the auspices of the U.S. Department of Housing and Urban Development ("HUD"). The Housing Authority administers that program in Los Angeles County. Under Section 8, eligible persons receive federal funds to subsidize their rental payments to private landlords. The administration of the program is governed by HUD regulations, as set forth in Part 982 of Title 24 of the Code of Federal Regulations ("CFR").

In 2009, Petitioner received Section 8 benefits from the Housing Authority for the City of Los Angeles. (Administrative Record ("AR") at 57). On September 23, 2009, Petitioner transferred her Section 8 benefits into the jurisdiction of the County's Housing Department. (Id.). As part of

<sup>1</sup> The Court grants Respondents' Request for Judicial Notice of Sections 15.3.1 and 16.4.10 of the 2009-2010 Administrative Plan adopted by the Housing Authority. These matters are not capable of being reasonably disputed. Post v. Prati, 90 Cal. App. 3d 626, 633 (1979).

transferring those benefits, the Housing Authority conducted a criminal background check to determine her continued eligibility for the subsidy. (Id.)

On October 8, 2009, Petitioner signed a criminal background consent form. (AR 4-5). On that form, petitioner accurately answered "no" to the questions "Have you ever been convicted of a crime?" and "Are you currently on parole or probation for any criminal offense." (AR 5). In addition, Petitioner authorized that any criminal history information of hers could be released. (AR 36).

Petitioner had been arrested in January 2008 on a shoplifting charge. (AR 61). That case, however, was eligible for Deferred Entry of Judgment. Although Petitioner pled guilty, she was not convicted on this charge. (AR 18-20). See Penal Code Section 1000.1(d) ("[A] defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3"). Instead, Petitioner was placed on deferred entry of judgment for a period of 18 months. (AR 63). On May 13, 2010, Petitioner successfully completed her DEJ program, her plea was set aside, the case dismissed and the proceedings terminated.<sup>2</sup> (AR 21).

On November 16, 2009 Petitioner was fingerprinted. (AR 6). A report generated by the FBI indicated that she had been "arrested or received January 11, 2008 by Police Department, Long Beach, and charged with counts of shoplifting." (AR 58). That report did not indicate the disposition of that charge. (Id.)

Months later, on February 8, 2010, the Housing Authority mailed a request to Petitioner requesting that she provide the Court docket arising out of her 2008 arrest. (AR 7). Petitioner was given until February 23rd to provide the requested information. (Id.) Two days later, a second request and "final notice" was mailed to her. (AR 8). She was told that she must submit the "court docket (case report) for arrest on or about January 11, 2008 by no later than March 12, 2010. (AR 8).

Six days later, on March 18, 2010, the Housing Authority sent Petitioner Notice of Proposed Termination of Housing Assistance. (AR 9). The grounds stated for this action was Petitioner's "failure to satisfy one or more obligations of the Section 8 . . . program administered by this agency." (Id.) In addition, Petitioner was notified that she had "failed to supply necessary documents to determine continue (sic) eligibility for rental assistance." (AR 11).

Petitioner requested a hearing and one was conducted on April 20, 2010. (AR 50, 56-69). At that hearing, Petitioner testified that she had encountered some difficulty trying to figure out where to obtain a docket sheet, but had obtained the docket in March, when she returned to court as part of her DEJ. (AR 55, 60). The docket was presented to the hearing officer. (AR 51-55). A simple reading of that docket confirmed Petitioner had truthfully stated that she had not suffered a conviction, nor had she been placed on probation.

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<sup>2</sup> Petitioner encountered some difficulties with completing her DEJ because of certain disabilities and her lack of a drug problem. (AR 64).

Despite the undisputed evidence that Petitioner's plea had not been entered and Petitioner had not been adjudged guilty of shoplifting, the Hearing Officer found On April 27, 2010, that "the evidence reflected in Exhibit 3 clearly indicates that she was convicted for engaging in criminal activity and said conviction was not properly disclosed to [the Housing Authority] on the Criminal Background Consent Form." (AR 24). Based on this finding, the Hearing Officer further concluded that "Respondents . . . exercised reasonable discretion and acted in accordance with applicable Federal and County policies . . . in terminating the Petitioner's housing subsidy." (AR 25).

For reasons not apparent in the record, the Hearing Officer issued a second decision on May 26, 2010. Perhaps recognizing the error of his prior decision, the Hearing Officer took a different tack. While lauding the candor of the Petitioner, he asserted that she had failed to establish an affirmative defense to her termination. (AR 28-29). "[T]he [Petitioner] should have known (under a "reasonable man" standard) that the Court Docket could have been obtained from the court wherein her case was adjudicated. (AR 29). Petitioner's failure to obtain the requested information constituted a "breach" of her obligations and, accordingly the Housing Authority "exercised reasonable discretion and acted in accordance with applicable Federal and County policies . . . in terminating the Respondent's housing subsidy." (AR 29).

One day later, on May 27, 2010, the Housing Authority terminated petitioner's Section 8 assistance. (AR 31).

Petitioner filed her Petition for Administrative Writ of Mandate on August 18, 2010..

### **Standard of Review**

Petitioner seeks review of the Housing Authority's administrative decision under CCP section 1094.5.

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514-15 (1974). The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP § 1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(c).

Section 1094.5 does not specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, 20 Cal. 4th 805, 811 (1999). In cases reviewing decisions which affect a vested, fundamental right, the trial court exercises independent judgment on the evidence. Bixby v. Pierno, 4 Cal. 3d 130, 143 (1971). In this case, the trial court is to exercise independent judgment on the evidence. See, e.g., Frink v. Prod, 31 Cal. 3d 166, 171

(1982)(“The right of the needy applicant to welfare benefits is as fundamental as the right of a recipient to continued benefits.”)

Under the independent judgment test, “the trial court not only examines the administrative record for errors of law, but also exercises its independent judgment upon the evidence disclosed in a limited trial *de novo*.” Bixby, supra, 4 Cal. 3d at 143. The court must draw its own reasonable inferences from the evidence and make its own credibility determinations. Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, 107 Cal. App. 4th 860, 868 (2003). In short, the court substitutes its judgment for the agency’s regarding the basic facts of what happened, when, why and the credibility of witnesses. Guymon v. Board of Accountancy, 55 Cal. App. 3d 1010, 1013-16 (1976). However, “in exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence.” Fukuda, supra, 20 Cal. 4th at 817.

### Analysis

1. The Hearing Officer Improperly Shifted the Duty of Obtaining the Docket Sheet Onto the Petitioner.

Under 24 C.F.R. Section 982.553(d)(1)(2) and (3), if the public housing authority purposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and *must provide the subject of the record and the tenant with a copy of the criminal record.*” (emphasis added). In addition, federal regulations require that the Housing Authority give the family an opportunity to dispute the accuracy and relevance of the record in accordance with Section 982.555. The cost of the criminal records check *may not be passed along to the tenants.* 24 CFR Section 982.553 (d)(1)(2) and (3).

The Hearing Officer’s assertion that the basis for Petitioner’s termination was not based on a belief that she had engaged in criminal activity is flatly contrary to the weight of the evidence. The Hearing Officer’s initial opinion rested on that very ground.<sup>3</sup> (AR 24-25). Moreover, the information that the Housing Authority requested -- a court docket sheet -- had only a single use - - to examine Petitioner’s criminal history.<sup>4</sup> The information sought was relevant only to whether Petitioner had suffered a conviction as a result of her shoplifting arrest. (AR 56-59). Not

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<sup>3</sup> The Hearing Officer’s role is “to determine if the original decision in this case is in accordance with the law, HUD regulations, and Housing Authority policies.” (RJN Exh. 2).

<sup>4</sup> Saying that the Housing Authority was just confirming the Petitioner’s own report of her criminal history is a distinction without a difference. Moreover, as discussed above, there was nothing inaccurate regarding Petitioner’s self-reporting. She had not been convicted of the shoplifting offense, nor had she been placed on probation. The FBI report of an arrest did not contradict those claims. Thus, the Housing Authority’s request for Petitioner to provide the criminal docket was not “reasonable,” nor was it done “in furtherance of ensuring program compliance.” (Respondents’ Brief in Opposition at 11).

surprising, the focus of the inquiry at Petitioner's hearing was the nature of her arrest, the status of her conviction, and whether she was on probation at the time she sought to transfer her Section 8 eligibility. (AR 61-65)

The Housing Authority's application of its Administrative Plan and Certified Statement of Family Obligations to shift the obligation of providing criminal records back onto the applicants is legally impermissible. And, the Hearing Officer's adoption of that burden shifting – by way of an affirmative defense – is legally improper. Where, as here, a specific regulation (as set forth in the CFR) requires that the PHA provide the applicant with a copy of the criminal record, the law precludes imposing that burden on the applicant.

As relevant specific regulations imposed a duty on the Housing Authority to provide the criminal docket to Petitioner, the Hearing Officer's conclusion that Petitioner had "breached" her obligations to provide this information is legally improper. Having failed to apply the relevant legal guideline, the Hearing Officer's conclusion that the Housing Authority "exercised reasonable discretion and acted in accordance with applicable Federal and County policies," is erroneous, and must be reversed.

### **Conclusion**

In this case, the Hearing Officer misapplied the law as it was the duty of the Housing Authority to obtain the court docket. Accordingly, a peremptory writ of administrative mandate shall issue vacating the hearing decision in this matter and for further proceedings consistent with this ruling.

Counsel for Petitioner is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

The Court's Ruling, signed and filed this date, shall be deemed to be the court's Statement of Decision.

DATED: OCTOBER 20, 2011

**ANN I. JONES**

ANN I. JONES, JUDGE OF THE SUPERIOR COURT