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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE J.S.C. Justice

PART 10

Index Number : 400434/2010

RICHARDSON, MELANEA

VS.

RHEA, JOHN

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

n this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ ~~No~~

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

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: 8/16/10

HON. JUDITH J. GISCHE J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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In the Matter of the Application of
Melanea Richardson,

Petitioner,

For a Judgment under Article 78 of the
Civil Practice Law and Rules,

-against-

John Rhea, as Chairperson of the New York City Housing Authority and the New York City Housing Authority,

Respondents.

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Decision/Order
Index No.:400434/10
Seq. No. : 001

Present:
Hon. Judith J. Gische
JSC

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Pet's n/pet, pet, ...	1
Verified Answer	2
HK affirm. In Reply ..	3

Upon the foregoing papers, the decision and order of the court is as follows:

Petitioner brings this Article 78 petition to compel Respondents to retroactively reinstate her to the Section 8 Housing Subsidy, Choice Voucher, program. Petitioner, Melanea Richardson, ("Richardson") is a working mother of three, who was previously granted a housing voucher to participate in the federally funded low income housing program known as "Section 8." Respondents, John Rhea and the New York City Housing Authority (collectively "NYCHA"), administer the Section 8 housing program in New York City. In January 2010, Ms. Richardson was notified that her Section 8 voucher had been cancelled. Petitioner brings this proceeding to challenge NYCHA's

termination of her voucher.

The material facts underlying the petition are not really disputed. On April 15, 2009, NYCHA assigned a section 8 voucher to petitioner, which was set to expire on October 15, 2009. Petitioner found an apartment to rent, located at 2585 Brainbridge Avenue, Bronx, NY 10458 ("property"), apartment B1 ("apartment"). A rental application for the apartment was submitted to NYCHA's Queens Leased Housing Office on October 9, 2009. In accordance with the regular processing of the application, an inspection was scheduled and took place on November 13, 2009. The apartment passed inspection.

On December 10, 2009 the rental package, including the approved inspection, was sent to the Quality Control Unit ("QCU") for further processing. Richardson heard nothing from NYCHA and, on December 18, 2009, her son, Davis Miqui, called Mr. Nelson in the Leased Housing Office. The parties dispute what was said during that conversation. NYCHA claims that Mr. Miqui was told that there was a problem with final approval because the landlord, a relatively new owner of the apartment, did not provide a recorded deed for the property. Mr. Miqui states that his conversation with NYCHA never included any problem about the landlord's deed. NYCHA also claims that it contacted the landlord directly for this information and that no such information came by or before 12/31/09. NYCHA's business log shows only that a call was made and left on an answering machine.

Regardless of the outcome of the parties' factual disputes about what was or was not said about the recording of the deed, certain other undisputed facts bear greatly on this dispute. Contrary to NYCHA's belief, the deed, dated June 4, 2009, was

actually recorded with the City Register on June 18, 2009. The "Recording and Endorsement Cover Page" for the deed, unequivocally proves that the deed had been recorded prior to the time that the rental package was submitted to NYCHA. Even if this cover page, confirming recording, had not been included with the copy of the deed that was part of the rental application, the information is readily available to NYCHA through ACRIS, the website of the Department of Finance.

On January 26, 2010, NYCHA notified Richardson as follows: "On 10/15/09 your Section 8 Choice Voucher expired without rental. We have, therefore, canceled the Voucher and your application has been removed from our active file."

Against the background of this case, NYCHA points out that in December 2009, due to a $58 million dollar funding shortfall, it was forced to make severe and deep cuts to the section 8 voucher program. At that time, it stopped funding new Housing Assistance Payment ("HAP") contracts with landlords, even for previously issued vouchers, where the housing rental package had not been submitted. As a broad policy, NYCHA also decided that it could not fund new vouchers for rental packages which had not been completed by December 10, 2009 and approved by December 31, 2009. See: Yoanson v. NYCHA (09 Civ. 10439[SHS]) decision dated January 26, 2010; Palomino v. NYCHA (Index # 401111/10; Decision/Order dated August 16, 2010). According to the affidavit of NYCHA Assistant Deputy General Manager of Operations of the Leased Housing Department, Gregory A. Kern, submitted in a prior class action[1],

[1]A class action entitled Yoanson v. NYCHA (09 Civ. 10439[SHS]), challenging NYCHA's decision not to fund vouchers, was commenced in the District court of the Southern District of New York and then withdrawn. Deputy Kern submitted a sworn affidavit in that case which sets out in detail the policies and procedures undertaken by

when NYCHA has sufficient funding to accept new rental packages, affected vouchers will be reached according to their certification date and permitted to resubmit rental packages. On or about December 30, 2010, a general letter telling voucher holders that their vouchers would not be funded was sent to all those holding unexpired vouchers. If and when the section 8 program obtains funding, those voucher holders will be reached according to their certification date and be permitted to resubmit new rental applications. Richardson, however, was treated as the holder of an expired voucher. Thus, her voucher was neither funded nor was she placed on any list of affected voucher holders who would be reached when and if there was additional funding. Instead, her voucher was cancelled outright.

Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: [1] was made in violation of lawful procedure; [2] affected by an error of law; [2] or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). An agency abuses its exercise of discretion if its decision lacks a rational basis. Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Co., 34 NY2d 222, 231 (1974); see also Matter of Colton v. Berman, 21 NY2d 322, 329 (1967).

Where the determination involves the interpretation of statutes and regulations,

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NYCHA in response to this funding deficit. This affidavit has been submitted in other cases against NYCHA concerning decision on affected vouchers. See: Palomino v. NYCHA (index # 401111/10; Decision/Order dated August 16, 2010)

judicial deference to an agency's interpretation is owed, but only when specialized knowledge and understanding of underlying operational practices or an evaluation of factual data, with inferences to be drawn therefrom, is at stake. Roberts v. Tishman Speyer Properties, LP, 13 NY3d 270 (2009). Where, however, the question is purely one of statutory reading and analysis, and depends only on accurate apprehension of legislative intent, then there is no basis for relying on any special competence or expertise of the administrative agency. Roberts v. Tishman Speyer Properties, LP, *supra*. The Court's analysis, under such circumstances, is whether the agency's interpretation of the statutes is affected by an error of law. CPLR §7803.

Richardson argues that after she submitted her application, NYCHA acted arbitrarily and capriciously by failing to follow its own policy of tolling the voucher period within which she could complete a rental application. She also argues that NYCHA acted arbitrarily and capriciously by failing to follow federal policy of giving her notice of the reason the rental application was not approved and an opportunity to cure any problems.

NYCHA argues that it has no legal obligation to extend the voucher period. It acknowledges that it does have a policy of tolling the voucher period, once it receives a fully submitted application. It argues that in this case, Richardson's rental application was incomplete because NYCHA did not have a recorded deed and therefore, NYCHA did not toll her application, but treated the voucher as one that had expired. It further argues that after June 2009, when NYCHA already knew there would be significant funding shortfalls, it adopted policies that would restrict the issuance of new vouchers and reconfirmed its existing policy not to grant extensions of vouchers, except under

limited circumstances. Since Richardson failed to complete her application, prior to December 10, 2009, in accordance with NYCHA's overall policy, NYCHA claims it cancelled her voucher.

The Court finds that the determination by NYCHA to cancel the voucher was arbitrary and capricious, because it rested on an incorrect conclusion that Petitioner's rental application was not complete before 12/10/09. NYCHA acknowledges that the apartment rental package had been submitted to it by October 9, 2009. It claims that the only reason that the package was not acted upon by 12/31/09 was that they did not have a "recorded" deed from the new landlord.

NYCHA never denies that it had a copy of the deed. It is beyond disputable that the deed had been recorded on June 18, 2009. Thus, what NYCHA is really arguing is that it did not have proof of the recording of the deed. This is factually disputed by Richardson, who claims that the rental package included proof of the recording of the deed. Even were NYCHA correct, however, the fact that it had a copy of the deed which had actually been recorded, should have been sufficient to complete a file. One of the primary purposes of recording a deed is to advise the public of the identity of the owner of the property. RPL §291; Decker v. Boise, 38 Sickels 215 (1880). In recent years, this information is readily available to the public, for free, from an electronic database known as ACRIS. The information was available to NYCHA since at least October 9, 2009.

Thus, the court finds that NYCHA's argument that the rental application was incomplete, because it did not have proof that the landlord's deed was recorded, lacks any rational basis.

Once NYCHA wrongly concluded that it did not have adequate proof of ownership of the property, it led to a string of decisions and actions by NYCHA that cannot be supported. Based on the original incorrect conclusion about the sufficiency of proof of ownership, NYCHA concluded that the rental application was incomplete as of December 10, 2009. Because it concluded that the rental application was incomplete, it never decided whether to approve or disapprove the tenancy. Based upon the incorrect conclusion that the rental application was incomplete, NYCHA failed to toll the time it was considering the application in determining whether the voucher had expired. Based upon its conclusion that the voucher had expired, NYCHA canceled the voucher altogether.

If, in fact, NYCHA had correctly found that he deed was recorded, it would have tolled the time it was considering the application. The review of the application would have begun no later than December 10, 2009. Even if the voucher could not be funded, Richardson would have been put in place, according to her certification date, to resubmit a new rental application, if and when, additional funding was obtained.

In making this determination, the Court is not taking issue with the tough policy decisions NYCHA has been making to address the severe cut backs in funding. The Court finds neither arbitrary nor capricious NYCHA's decision not to further process rental applications that were in process and not complete before 12/10/09. NYCHA has the authority to refuse a voucher or to refuse to fund a voucher where it does not have the funds to do so. See: Yoanson v. NYCHA, 09 Civ 10439 [SHS]. Decision dated 1/26/10; Form for Voucher Housing Choice Program §2; see also: 24 CFR §982.454; 982.204(d)(2). What the court finds arbitrary and capricious in this case is NYCHA's

determination that this particular rental application was incomplete on 12/10/09.

The remedy, however, is not for this Court to rule upon whether to approve the rental subsidy. That is for NYCHA to do. The Court grants the petition only to the extent of remanding the matter back to NYCHA for it to act upon Richardson's rental application as though it had been completed no later than December 10, 2009 and to treat Richardson consistently with its policies that have been applied to all holders of existing vouchers as of 12/10/2009.

In accordance herewith it is hereby:

ORDERED and ADJUDGED that the Article 78 Petition is granted, and it is further

ORDERED and ADJUDGED that the January 26, 2010 determination by respondents cancelling petitioners section 8 voucher is annulled and it is further

ORDERED and ADJUDGED that the matter is remanded the to the New York City Housing Authority for further proceedings consistent with the decision and order and it is further

ORDERED and ADJUDGED that no costs and/or disbursements are awarded to any party herein; any requested relief not expressly granted in this decision is denied and this constitutes the decision and order of the Court.

New York, NY
August 16, 2010

SO ORDERED:

J.G. J.S.C.