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JAZZMICK YOUNGER	:	SUPERIOR COURT OF NEW JERSEY
	:	HUDSON COUNTY: LAW DIVISION
Plaintiff,	:	DOCKET NO. HUD-L-4139-12
	:	
vs.	:	**Civil Action**
	:	
JERSEY CITY HOUSING AUTHORITY	:	**OPINION**
	:	
Defendant.	:	
	:	

DATE OF HEARING: December 19, 2012

DATE OF DECISION: January 7, 2013

SARKISIAN, J.S.C.

NORTHEAST NEW JERSEY LEGAL SERVICES CORP.
Attorney for Plaintiff Jazzmick Younger
(Gregory Diebold, Esq. appearing)

JERSEY CITY HOUSING AUTHORITY LAW DEPARTMENT
Attorney for Defendant Jersey City Housing Authority
(Eileen Ingram-Willis, Esq. appearing)

LIBERO MAROTTA, ESQ.
Attorney for Non-Party Orlando Bru

Summary of Action

This case arises out of the termination of plaintiff's Section 8 voucher by defendant Jersey City Housing Authority ("JCHA"), the local agency that administers the Section 8 program. Plaintiff has brought this action in lieu of prerogative writ to challenge the administrative procedure and hearing by which she was dismissed from the program. Plaintiff argues that defendant both failed to comply with the applicable

regulations and that defendant's actions violated her Due Process rights under both the Federal and New Jersey Constitutions.

Statement of Material Facts

The record in this prerogative writ case is far from clear, a result of the Defendant, Jersey City Housing Authority's ("JCHA"), choice not to create a verbatim record of the hearing required under the applicable regulations.[1]

The following facts are what the Court could deduce from the record[2] and briefs submitted. Plaintiff applied for and began receiving a Section 8 voucher in 2009. The Jersey City Housing Authority ("JCHA") administers the Section 8 program in this case. In September 2011, she moved into an apartment located at 85 Bostwick Avenue,

[1] While it is true that 24 C.F.R.982.555 requires the Housing Authority (PHA) to "give a participant family an opportunity for an **informal** hearing to consider whether PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and the PHA policies" including decisions such as the one now under review by the Court, the record below submitted by Defendant's attorney as to the "hearing" consists of a letter determination by a PHA employee, Ms. Santana, dated July 24, 2012, which after citing regulatory authority and documents considered concludes, **without any recitation of the testimony received at the hearing,** that it has no other recourse than to "uphold its decision in the termination of assistance effective August 1, 2012." Plaintiff's attorney with his brief did submit the undisputed affidavit of his client on November 20, 2012 indicating, inter alia, that she was not represented by an attorney and that the hearing lasted approximately ten minutes.

[2] The Administrative Record submitted by the defendant to the Court consisted of the following:

1. Letter dated June 4, 2012 from defendant Jersey City Housing Authority to plaintiff regarding annual recertification deadling of June 26, 2012.
2. Letter dated June 4, 2012 from JCHA to plaintiff regarding the annual recertification appointment on June 27, 2012.
3. Letter dated June 28, 2012 from JCHA to plaintiff regarding her termination from the Section 8 Rental Assistance Program.
4. Letter dated June 28, 2012 from JCHA to Orlando Bru regarding plaintiff's termination.
5. Letter from plaintiff to JCHA received on July 3, 2012 where plaintiff requests an informal hearing.
6. Letter dated July 3, 2012 from JCHA to plaintiff regarding her informal hearing date of July 18, 2012.
7. Letter dated July 24, 2012 from JCHA to plaintiff regarding outcome of informal hearing and upholding the termination.
8. Various complaint letters from the landlord, Mr. Bru, to the plaintiff and to the defendant Housing Authority.
9. Copy of the lease between Mr. Bru and plaintiff.

Jersey City, New Jersey. The Section 8 program paid all of plaintiff's $875 monthly rent. Sometime in 2012, plaintiff's landlord, Orlando Bru, began sending complaints about plaintiff's conduct to the Jersey City Housing Authority. The letters outlined the following complaints:

- **April 26, 2012**: Plaintiff allowing a non-tenant to use keys to enter the building and her apartment, as well as other young men unlocking the front doors with screw drivers to enter and visit the plaintiff. As a result, the locks needed to be replaced. The landlord also complained about the plaintiff hosting crowds of visitors, who would stay late into the night, use drugs, urinate in the hallways and leave tobacco debris in the hallways.

- **May 1, 2012**: At 4 a.m. plaintiff, locked out of the building, began ringing every doorbell in order to find someone to let her in. This letter also included similar complaints regarding the "unsafe crowd" that plaintiff frequently associated with in and around the building. The landlord gave plaintiff 60 days to move out.

- **June 19, 2012**: Similar complaints regarding drug use and loitering in the hallways until late at night.

- **July 12, 2012**: Complaining about excessive visitors to plaintiff's apartment and how they broke the front door lock.

- **July 20, 2012**: Plaintiff held a barbeque in front the building until early in the morning. The police had to be called.

- **July 24, 2012**: Plaintiff continued to hold BBQ's with large crowds. Fights requiring a police response on a regular basis.

See Record Item 8.

On **June 28, 2012**, due to these letters and the fact that plaintiff was late in submitting her packet for recertification required by the program, she received a letter terminating her rental assistance. The letter, titled "RE: TERMINATION & APPOINTMENT", outlined the following reasons for termination:

- Failed to submit package for recertification and failure to come for recertification

- Violation of your lease

Record Item 3.

Plaintiff requested an administrative hearing to contest her termination. Record Item 5.

The Hearing

A hearing was scheduled at the JCHA's administrative offices on **July 18, 2012**. See Record Item 6. Present were the plaintiff, her caseworker Nancy Vega, and the hearing officer Luz Santana. Santana is an employee of JCHA. No record was made of the hearing. The hearing was informal, and consisted of a discussion between the three (3) participants. Neither the landlord, nor anyone with personal knowledge of plaintiff's conduct was present at the hearing. The hearing lasted approximately ten (10) minutes. Plaintiff did not bring an attorney, and claims that she was not informed of her right to have one.

The hearing officer rendered a decision on **July 24, 2012** upholding plaintiff's termination from the Section 8 program. Record Item No. 7

Plaintiff filed this action on **August 23, 2012**. The complaint is in the nature of an action in lieu of prerogative writ seeking a declaratory judgment that the administrative procedures utilized by defendant violated plaintiff's Due Process rights under federal law, pursuant to 42 U.S.C. 1983, and the New Jersey Constitution, pursuant to N.J.S.A. 10:6-1. Plaintiff points to the deficient notice, the exclusive use of hearsay evidence to justify termination, the lack of any record of the hearing, and the use of a JCHA employee as the hearing officer in support of this argument.

Plaintiff also argues that defendant failed to comply with the CFR regulations that govern the Section 8 program, particularly the notice requirement tied to a participant's termination.

Applicable Law

It should be noted at the outset, that, although this case involves the interpretation of a federal program and federal regulations, the program is administered by a local agency and state courts have exercised the power to review whether the agency's actions comport with due process. See, e.g. Bouie v. New Jersey Dept. of Community Affairs, 407 N.J. Super. 518, 531-32 (App. Div. 2009); Fern Dowling v. Bangor Housing Authority, 2006 ME 136 (ME 2006); Costa v. Fall River Hous. Auth., 453 Mass. 614, (Mass 2008). Here, Plaintiff challenges the JCHA's procedures under the New Jersey Constitution, creating a tangible state question.

Section 8 Program Generally

In Franklin Tower One v. N.M., 157 N.J. 602 (1999), the New Jersey Supreme Court described the Section 8 program and its interplay with local government:

> The Section 8 housing assistance program was established by the Housing and Community Development Act of 1974, codified at 42 U.S.C.A. 1437f, which amended the United States Housing Act of 1937. The Section 8 program was enacted "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C.A. 1437f(a). To that end, Section 8 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to enter into annual contribution contracts with local public housing authorities so that they may make assistance payments to owners of existing dwelling units. 42 U.S.C.A. 1437f(b).
>
> When a tenant is deemed eligible for Section 8 assistance, the housing authority issues a voucher or certificate. 24 C.F.R. 982.302(a). The tenant must then find an apartment and an owner "willing to lease the unit under the [Section 8] program." 24 C.F.R. 982.302(b). Once such a unit is located, the tenant executes a lease with the owner. 24 C.F.R. 982.305. Generally, the tenant pays no more than thirty percent of her household income toward the monthly rent. 42 U.S.C.A. 1437f(o)(11)(B)(ii). The housing authority enters into a separate Housing Assistance Payment (HAP) contract with the owner, pursuant to which the

> housing authority agrees to pay the balance of the fair market rent as established by HUD. 24 C.F.R. 982.1.
>
> . . .
>
> The federal legislation and regulations explicitly contemplate that the states will work with the federal government to implement the Section 8 program. See, e.g., 42 U.S.C.A. 1437 ("It is the policy of the United States . . . to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs."); 24 C.F.R. 982.1 (providing that voucher and certificate programs are administered by state or local housing agencies); see also Kargman v. Sullivan, 552 F.2d 2, 11 (1st Cir. 1977) (finding federal housing legislation to be "consciously interdependent with the substructure of local law relating to housing") (footnote omitted). In addition, a number of the Section 8 regulations defer to state or local law. See, e.g., 24 C.F.R. 982.308 (providing that tenant's legal capacity to enter into lease is determined by state or local law); 24 C.F.R. 982.313 (providing that landlord's use of security deposit at end of tenancy is subject to state or local law); 24 C.F.R. 982.4 (providing that domicile of head of household is determined by state or local law); 24 C.F.R. 982.451 (providing that housing authority that fails to make timely payment to landlord is subject to late fees in accordance with state or local law). The regulations also provide that landlords may be entitled to less than the fair market rent as determined by HUD if the unit is located in a municipality with a rent control ordinance. 24 C.F.R. 982.511.
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> Franklin Tower One v. N.M., 157 N.J. 602, 608-10 (1999).

Due Process in Section 8 Termination Proceedings

The Court will focus on Plaintiff's arguments regarding the notice provided, and the JCHA's exclusive use of hearsay evidence as the Court views these issues as dispositive of the Court's decision in this case**.** The Appellate Division in Bouie v. New Jersey Dept. of Community Affairs, 407 N.J. Super. 518 (App. Div. 2009), described Section 8 hearing process as follows:

> The governing federal regulations require a PHA that administers the Section 8 program such as the DCA to afford a recipient an opportunity for an "informal hearing" before terminating benefits. 24 C.F.R. 982.555. Those regulations provide that the recipient must be given "a brief statement of reasons for" the proposed termination, 24 C.F.R. 982.555(c)(2)(i), a statement of the deadline for requesting a hearing, 24 C.F.R. 982.555(c)(2)(iii), and "the opportunity to present evidence and . . . question any witnesses," 24 C.F.R. 982.555(e)(5). The regulations also provide that "[t]he person who conducts the hearing must issue a written decision," with a brief statement of reasons, and that any "[f]actual

> determination" must be based upon a "preponderance of the evidence," 24 C.F.R. 982.555(e)(6). However, those regulations do not prescribe who must conduct such a pre-termination hearing or make the final determination. Instead, the federal regulations delegate this responsibility to the PHA administering the Section 8 program, by providing that the hearing "may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person." 24 C.F.R. 982.554(b)(1); 24 C.F.R. § 982.555(e)(4) (emphasis added)."

Id. at 528.

With regards to the notice, the applicable regulation provides:

> PHA must give the family prompt written notice that the family may request a hearing.
>
> The notice must:
>
> > (i) Contain a brief statement of reasons for the decision,
> >
> > (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
> >
> > (iii) State the deadline for the family to request an informal hearing.

24 C.F.R. 982.555(c)(2).

It is requirement (i) that is at issue in this case. Plaintiff argues that the notice it received failed to satisfy even this minimal requirement under the regulation and, further, failed to comply with her Due Process rights.

Here, plaintiff's notice failed to mention the deadlines and appointments she missed for her recertification. See Record Item 3. The notice also failed to identify which lease provisions were violated by the plaintiff. See Record Item 3. In fact, the notice was completely devoid of any reference to the CFR provisions upon which plaintiff's termination was being based. See Record Item 3. The only reference made to her disruptive conduct was the following:

> At the time of your move you signed the following HUD form:
>
> **VOUCHER**
>
> Engage in abuse of abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises.

See Record Item 3. No identification of plaintiff's alleged improper conduct is found anywhere in the notice. In short, JCHA's notice advising plaintiff that she violated her lease left her unable to adequately prepare a defense.

Just as in Bouie, "[t]he procedures employed in the proceedings before the hearing officer regarding the termination of appellant's Section 8 rental assistance benefits violated the Due Process Clause and the HUD regulations governing the Section 8 program because the [JCHA] failed to give appellant 'adequate notice detailing the reasons for [the] proposed termination, and an effective opportunity to defend by confronting [the] adverse witnesses and by presenting [her] own . . . evidence.' Goldberg, supra, 397 U.S. at 267-68, 90 S. Ct. at 1020, 25 L.Ed.2d at 299. Both notices of intention to terminate appellant's benefits were form notices that failed to inform her of the specific reasons for termination." Id. at 532.

The initial notice in this case, dated **June 28, 2012** and titled "RE: TERMINATION & APPOINTMENT", only stated the following:

- Failed to submit package for recertification and failure to come for recertification
- Violation of your lease

See Record Item 3. The second notice, dated July 3, 2012, merely provided plaintiff with the date of her hearing, and failed to elaborate on the reasons her voucher was being terminated.

The notice found insufficient in Bouie was more specific than the one here. In Bouie, the plaintiff received the following notice:

> You are in violation of 24 C.F.R., Section 982.522(c), Breach of HQS by family, in that you failed to take appropriate action to correct an HQS breach as described in 24 C.F.R., Section 982.404(b)(1). You are responsible for the tenant cause[d] repairs in your apartment and you were given adequate notice by the HA to have repairs completed by [a] specific date or risk cancellation of your rental assistance. Based on this information we have decided to terminate your participation in the Section 8 Tenant-Based Assistance Program.
>
> Id at 532.

In finding this notice insufficient, the Appellate Division held:

> Thus, this notice failed to identify the "tenant cause[d] repairs in her apartment" that appellant had failed "to have completed by [a] specific date." The amended notice, dated March 8, 2005, repeated this same form language, and again failed to identify the specific "tenant cause[d] repairs" that appellant had failed to perform by the date specified by the DCA. Consequently, both notices "merely parroted the broad language of the [HUD] regulations," Billington v. Underwood, 613 F.2d 91, 94 (5th Cir.1980), without identifying the specific alleged conduct upon which the proposed termination of appellant's Section 8 benefits was based, and consequently failed to provide the notice of reasons for proposed termination required by Goldberg.
>
> Id.

With regards to the presentation of evidence in an informal hearing, the applicable regulation states:

> (5) Evidence. The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
>
> 24 C.F.R. 982.555(e)(5).

Here, the sole evidence used against plaintiff in the termination proceeding was a series of letters sent by plaintiff's landlord to JCHA. The landlord did not attend the hearing, and plaintiff had no opportunity to cross-examine him with regards to his allegations.

The Appellate Division, in Bouie, addressed a participant's Due Process rights during the process by which Section 8 benefits are terminated:

> In Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), the Court held that a state's termination of welfare benefits without first affording the recipient an opportunity for an evidentiary hearing violates the Due Process Clause of the Fourteenth Amendment. In order for a pre-termination hearing to satisfy Due Process requirements, the recipient must be given "timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. Id. at 267-68, 90 S.Ct. at 1020, 25 L.Ed.2d at 299.
>
> The governing HUD regulations recognize that the receipt of rental assistance under the Section 8 program is a public assistance benefit that cannot be terminated without affording the recipient a pre-termination hearing in conformity with the principles set forth in Goldberg. In fact, those regulations mirror the requirements of Goldberg. Compare 24 C.F.R. 982.555(c)(1) (recipient may request hearing challenging termination if he "does not agree with the [initial] determination") with Goldberg, supra, 397 U.S. at 267, 90 S.Ct. at 1020, 25 L.Ed.2d at 298 (recipient must be afforded a pre-termination hearing "to protect a recipient against an erroneous termination of his benefits"); compare 24 C.F.R. 982.555(c)(2)(i) (PHA must give "prompt written notice" of the proposed termination containing "a brief statement of reasons") and 24 C.F.R. 982.555(e)(5) (recipient "must be given the opportunity to present evidence, and may question any witnesses") with Goldberg, supra, 397 U.S. at 267-68, 90 S. Ct. at 1020, 25 L.Ed.2d at 299 (recipient must receive "timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally"); see also Section 8 Certificate Program, Moderate Rehabilitation Program and Housing Voucher Program, 55 Fed. Reg. 28, 538 (July 11, 1990) (stating that "PHAs must adopt written informal pre-termination hearing procedures for participants, which fully meet the requirements of Goldberg v. Kelly").
>
> Id. at 531-32.

Furthermore, the JCHA relied exclusively on hearsay evidence to justify its termination. Although all the evidence admitted in a Section 8 hearing need not be comply with the Rules of Evidence, 24 C.F.R. 982.555(e), this hearing officer's wholesale reliance on hearsay evidence, with no finding as to its reliability, to resolve a disputed factual issue was improper. See Ervin v. Hous. Auth. of the Birmingham Dist., 281 Fed. Appx. 938, 942 (11th Cir. 2008) ("Although the rules of evidence are not strictly

applied in administrative hearings, there are due process limits on the extent to which an adverse administrative determination may be based on hearsay evidence."); Costa v. Fall River Hous. Auth., 453 Mass. 614, 627 (Mass. 2008) ("[H]earsay evidence may form the basis of a PHA's decision to terminate Section 8 assistance so long as that evidence contains substantial indicia of reliability."). "[I]n our State as well as in many other jurisdictions the rule is that a fact finding or a legal determination cannot be based upon hearsay alone. Hearsay may be employed to corroborate competent proof, or competent proof may be supported or given added probative force by hearsay testimony. But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it." Weston v. State, 60 N.J. 36, 51 (1972). Here, this standard is not satisfied. There is no evidence in the record that the landlord's letters were substantiated by any form of competent evidence. Accordingly, this aspect of plaintiff's hearing also violated her Due Process rights.

Late Recertification

Although the Court does not explicitly address the merits of plaintiff's termination from the program, instead focusing on the procedural deficiencies in the proceeding below, it is compelled to comment on defendant's reliance on plaintiff's late recertification submission as grounds for dismissal. As outlined in the Hearing Officer's written findings contained in her July 24, 2012 letter, plaintiff was six (6) days late in submitting her package for recertification and missed an appointment with her caseworker. Record Item 7. A Section 8 tenant is required to recertify as to their income and family composition each year and can be terminated from the program for

failing to do so. See 24 C.F.R. 982.551(b)(2); 24 C.F.R. 982.552(c)(i). Here, plaintiff supplied the information required by the regulations, albeit six (6) days late. This minor infraction does not seem to create grounds for termination, since 24 C.F.R. 982.551(b)(2) does not mention the timeliness of a participant's submissions. Such a determination is supported by the extreme hardship, and probable homelessness, that the termination of plaintiff's Section 8 voucher would create when compared to the trivial nature of her non-compliance. Furthermore, defendant's reliance on plaintiff's failure to attend a meeting or call to reschedule her meeting must be viewed in light of the fact that she received the termination letter on June 28, 2012, and hardly had an opportunity to reschedule an appointment she missed on June 27, 2012.

Furthermore, Defendant's own Administrative Plan outlines the lenient view taken by the JCHA towards such late filings in the section titled "Procedure When Appointments Are Missed or Information Not Provided":

> In most cases under the Plan, the family will be given two opportunities before being issued a notice of termination for breach of a family obligation.
>
> After issuance of a termination notice, if the family offers to correct the breach within the time allowed to request a hearing, the notice may be rescinded if the family offers to cure the breach and the family does not have a history of non-compliance.

JCHA Section 8 Administrative Plan, pg. 119.

Here, there is no evidence to suggest that plaintiff was ever late on any other recertification submissions. Furthermore, plaintiff cured her breach in six (6) days, well within the 14 days given to her to request a hearing on her termination.

Finally, while it is not necessary for the Court to address plaintiff's contention that a hearing conducted by a housing authority employee does not provide a Section 8 recipient with sufficient due process protections, the Court has considered the argument

and, under the facts of this case, rejects same. The Court finds that the regulatory controls which require that the hearing be "conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person", 24 C.F.R. 982.554(b)(1); 24 C.F.R. § 982.555(e)(4), is sufficient to meet due process requirements. Nothing has been submitted to the Court to suggest that Ms. Santana does not meet the requirements of this regulation.

Conclusion

For the foregoing reasons, the case is remanded to the JCHA for an administrative hearing within sixty (60) days of this decision that comports with this decision, more specifically:

(1) A more specific notice that advises plaintiff of:

   a. Her alleged violations regarding recertification and the lease – including dates, specific allegations of conduct, and citations to the applicable authority justifying termination;
   b. Her right to counsel pursuant to 24 C.F.R. 982.555(e)(3);
   c. Her right to discovery pursuant to 24 C.F.R. 982.555(e)(2(i); and
   d. Her right to present evidence pursuant to 24 C.F.R. 982.555(e)(5).

(2) A verbatim record of the proceeding to insure compliance; and

(3) In order to support a termination of plaintiff's benefits, the JCHA must rely on something more than hearsay evidence.

(4) If the defendant in the remand hearing intends to pursue termination based on the failure to submit a recertification package within time, defendant must specifically include in her notice of termination the chronology of the failure and why her attempts to cure the defect referenced in this decision are not adequate pursuant to the defendant's Administrative Plan .

The Court does not retain jurisdiction, except if any party needs relief based upon this decision with respect to consolidated action Bru v Younger L-4636-12, such application shall be made within ten (10) days of this decision.

SO ORDERED.

BARRY P. SARKISIAN, J.S.C.