

# COURT DECISIONS

## NEW YORK | ADMINISTRATIVE LAW

### Decision to Bar Homeless Woman From Applying For Public Housing Shocked Conscience, Vacated

PETITIONER, a homeless, emotionally and physically fragile woman, challenged as arbitrary a hearing officer's rejection of her appeal to respondent Housing Authority's determination to bar her from applying for Section 8 public housing for three years. She appeared at an authority office for an interview, and thereafter, the agency alleged petitioner engaged in and threatened violent behavior. Petitioner argued while she was frustrated with the threat of her case being closed, after appearing numerous times at agency offices, she accidentally knocked a clock over, but never engaged in violent behavior. She contended the denial was a harsh penalty shocking the conscience. The court agreed, noting the incident was de minimus and did not rise to a level of justifying denying housing to a homeless person. The court concluded the penalty was so disproportionate to the offense that it shocked the conscience and constituted an abuse of discretion. Thus, it vacated the determination, directing the authority to process petitioner's application and schedule a new interview.

*Matter of Toomer v. Rhea, 4016476/09 (April 23),  
Supreme Court, Justice Goodman.*

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# Decision to Bar Homeless Woman From Applying For Public Housing Shocked Conscience, Vacated

Justice Emily Jane Goodman

MATTER OF TOOMER v. RHEA, 4016476/09, Decided 04/23/10—

**P**etitioner, who suffers from two serious medical conditions which cause her to be vulnerable and fragile, both physically and emotionally, is part of the ever-increasing homeless population in this city. During an allegedly frustrating housing application interview, Petitioner knocked a clock off a caseworker's desk, and for that reason the New York City Housing Authority ("Housing Authority") barred Petitioner from public housing for three years. Petitioner brings this Article 78 proceeding to challenge that decision, arguing that such a harsh penalty shocks the conscience. The Court agrees.

## FACTS

On August 2, 2007, Petitioner appeared at the Housing Authority's Brooklyn Applications Office as part of her request for Section 8 housing, a federal program operated by the U.S. Department of Housing and Urban Development (HUD), pursuant to Title 24, Part 982 of the Code of Federal Regulations (CFR). No Section 8 issues are part of this motion, except to explain why Petitioner was at the office. On August 23, 2007 Petitioner received a letter from the Housing Authority stating that she would be ineligible to apply for public housing for three years for the following reason:

On Thursday, 8/02/07, applicant, Kendra Toomer visited the Brooklyn Applications Information Office at 4:50pm to inquire about the status of her Section 8 application. Kendra Toomer spoke to the Assistant Manager in a very loud and disruptive tone of voice. The Manager intervened and advised her that her application will be reviewed and that she may contact the office within a week for the result. Applicant insisted on immediate action and did not like what she heard and became agitated. She reached over the counter by the receptionist's area and pushed the time clock causing it to fall on the floor and broke the wires (sic). The police were summoned.

The Housing Authority's policy (hereafter "The Policy") states:

Persons Who Within the Last Three Years Have Engaged in or Threatened Abusive or Violent Behavior Toward Housing Authority Staff

Such families shall be ineligible for three years from the date they are declared ineligible. However, if the Authority has evidence of three or more such incidents within the last three years, the family shall be ineligible for four years from the date the family is declared ineligible.

If the latest possible date of the offending behavior can be approximately established, the period of ineligibility shall begin from that date, instead of from the date the family is declared ineligible.

Petitioner appealed the Housing Authority's determination and a hearing was held. At the hearing, Petitioner testified that she is homeless and has been applying for public housing for over 10 years, and has had no other incidents. Petitioner stated further that she had appeared at the Housing Authority Applications Information Office three times since her initial interview on April 27, 2007 and was told each time that her case was pending. Petitioner testified that on August 2, 2007, the date that she knocked over the clock, she was frustrated with the threat of her case being closed and she felt she was being ignored by the Housing Authority, after having appeared many times, waiting hours. Petitioner stated that she had no contact with the police and left the office when she was told to do so by security. Petitioner has never been convicted of a crime and has no criminal history. Although Petitioner argues that she knocked the clock off the caseworker's desk by accident, the hearing officer implicitly rejected that contention and Petitioner has not shown this implicit factual finding was arbitrary and capricious.

## Discussion

This Court has the authority to review an administrative sanction that "shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law" *Peoples v. New York City Housing Authority*, 281 A.D.2d 259, 260 (1st Dept. 2001).

Petitioner maintains that the decision is arbitrary and capricious and that the penalty—being barred from even applying for public housing for three years—is so severe that it shocks the conscience.

Under 24 CFR §982.54(23), the Housing Authority must consider "family behavior or suitability for tenancy" when screening applicants for public housing. The Policy was presumably instituted pursuant to federal law, but no definition or guidance is given by the Housing Authority to

determine what would constitute "abusive or violent behavior." Even if properly considered "abusive or violent behavior," the incident described by the Housing Authority in support of its decision to bar Petitioner from public housing for three years was de minimus and does not rise to a level that would justify denying a homeless person housing, under the circumstances of this case. The penalty is so disproportionate to the offense that it shocks the conscience, and constitutes an abuse of discretion as a matter of law. *Vargas v. Franco*, 238 A.D.2d 274 (1st Dept. 1997).

In *Peoples v. New York City Housing Authority*, the First Department held that even where a tenant committed "a very serious breach of respondent's rules" by accosting a housing authority representative during an inspection, the penalty of termination of housing benefits was too severe and shocked the conscience. *Peoples v. New York City Housing Authority*, 281 A.D.2d 259 (1st Dept. 2001). Similarly here, the penalty of barring an individual, who has no criminal history, from public housing for three years, for a momentary lapse in judgment that did not involve physical contact or a threat of physical contact, or cause significant damage or injury, is too severe.

In *Winn v. Brown*, the Court found that the Housing Authority's decision to terminate petitioner's tenancy shocked the conscience in light of the fact that petitioner was under a great deal of stress when the incidents occurred, even though petitioner's actions included "screaming profanities, racial epithets and making threats to respondent's employees". *Winn v. Brown*, 226 A.D.2d 191 (1st Dept. 1996).

Similarly, in *Milton v. Christian*, although the tenant threatened a Housing Assistant on two occasions and verbally abused and possibly struck a maintenance worker and two others in a dispute concerning the failure of the staff to repair a leak in the tenant's apartment, the First Department found that the penalty of termination was "shocking to one's sense of fairness," noting that the tenant was "under extreme physical and emotional stress" due to medical problems, abandonment by the tenant's wife and child and neglect by the Housing Authority to repair leaks in the tenant's apartment. *Milton v. Christian*, 99 A.D.2d 984,985 (1st Dept. 1984).

Here, as in *Winn* and *Milton*, Petitioner was under a great deal of stress as she had made numerous visits to the Applications Office and felt that the Housing Authority was ignoring her case. Petitioner, who suffers from two serious medical conditions, has been homeless for many years; despite her hardships, she has had no other incidents with the Housing Authority. The incidents described in the cases cited above are much graver than the incident in this case, where Petitioner merely knocked a clock off a caseworker's desk. The Housing Authority does not claim that Petitioner made any threats, as were made by the petitioners in both *Winn* and *Milton*, nor do they claim that Petitioner physically accosted anyone, as the petitioner in *Peoples* did.

Accordingly, it is hereby

ADJUDGED that Petition is granted and the determination of the hearing officer, dated November 24, 2008, and the determination of Respondent New York City Housing Authority, dated August 23, 2007, to bar Petitioner from seeking public housing and/or seeking Section 8 assistance for three years for engaging in "abusive or violent behavior toward Housing Authority Staff," are vacated; and it is further

ORDERED that the Respondent shall process Petitioner's application forthwith, including, if necessary, scheduling a new interview, which Petitioner's attorneys may attend; and it is further

ORDERED that issue of a lesser penalty is remanded to Respondent; however, even though a determination is not yet made on the lesser penalty, because the excessive three year penalty imposed expires in August, 2010, Respondent is directed to process Petitioner's application for NYCHA housing and Section 8, forthwith, consistent with all other eligibility requirements, and the availability of Section 8 funds<sup>1</sup>.

This constitutes the Decision, Order and Judgment of the Court.

1. The Court is mindful of the recent catastrophic status of Section 8 vouchers in this city. ■



SUPREME COURT

Justice Goodman