

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2022-10-29

Lynsey Associates v. Jenkins

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Lynsey Associates v. Jenkins" (2022). *All Decisions*. 672.
https://ir.lawnet.fordham.edu/housing_court_all/672

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART C

-----X

L&T Index # 032099/2029

LYNSEY ASSOCIATES

Petitioner

-against-

DECISION & ORDER

MICHAEL JENKINS,

Respondent

-----X

Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Petitioner’s motion to lift ERAP Stay (motion seq #6):

<u>Papers</u>	<u>NYSCEF DOC #</u>
Notice of Motion With Supporting Affirmation, Affidavit, Exhibits A-C	3
Affirmation in Opposition	8
Affidavit in Opposition	9
Exhibits A-G in Opposition	10-16

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

There is a long history to this eviction proceeding, which was filed on July 16, 2019 as a licensee holdover and initially settled on November 26, 2019 in an agreement awarding petitioner a possessory judgment, execution stayed through January 20, 2020 for respondent to move out, with a warrant issued to City Marshal Weinheim on December 11, 2019. Two years after the original settlement, in a detailed Stipulation of Settlement dated November 18, 2021 (“the Stipulation”), this proceeding was converted from a holdover to a nonpayment and the parties acknowledged arrears as of that date of \$46,259.04, comprised of a “pre-pandemic balance” due through February 29, 2020 of \$19,197.90; a “pandemic balance” due for the period of March 2020 through June 2021 of \$20,591.04; and a “post-pandemic balance” of \$6,470.19. Respondent agreed in the Stipulation to pay the full arrears plus current rent “within 45 days of a final determination on his application for ERAP [Emergency Rent Assistance Program] funds”. Stipulation at ¶ 7. Execution of the warrant was stayed “through and including the 45th day after OTDA’s [New York State Office of Temporary and Disability Assistance] final determination on Respondent’s ERAP application,” Stipulation at ¶ 10, and petitioner was permitted to execute the warrant “[u]pon default in payment of the pre-pandemic and post-pandemic balances within 45 days of a final ERAP determination”,

Stipulation at ¶ 11. In the event of default in payment of the “pandemic balance”, petitioner was permitted to restore the case to the court’s calendar. Stipulation at ¶ 13.

Now before the court is petitioner’s motion to restore the case to the calendar and to permit re-issuance and execution of the warrant of eviction. In support of the motion petitioner asserts it should be permitted to move forward with the eviction because respondent’s ERAP application was denied, as evidenced by an email from OTDA dated June 14, 2022, and nothing has been paid since the date of the Stipulation. In opposition, respondent acknowledges that his original ERAP application was denied and asserts that, rather than an appeal, he filed a new ERAP application on August 16, 2022 which has been “provisionally approved”. Respondent argues that a “provisional approval” is not a final determination and, accordingly, petitioner’s motion should be denied. Further, respondent has received commitments from charities to pay some of the other arrears and is awaiting approval of his “CityFHEPS” application to pay arrears and assist with future rent payments.

The court has confirmed on the ERAP “Application Status” website that respondent’s current ERAP application is still in a “provisionally approved” status: the website indicates that “All Landlord Information and Documentation” has been verified, although verification of the “Tenant Information and Documentation” is not complete.

DISCUSSION

The ERAP Law imposes a stay of eviction proceedings when an ERAP application is filed, “pending a determination of eligibility.” L. 2021, c. 56, Part BB, Subpart A, § 8, as amended by L. 2021, c. 417, Part A, § 4. By Administrative Order (AO) 158/22 (superseding AO 34/22) of Chief Administrative Judge Lawrence Marks, an ERAP stay is to continue “until a final determination of eligibility for rental assistance is issued by [OTDA], including appeals.” The “final determination” language was adopted by the parties in their Stipulation of November 18, 2021, which uses that phrase three times. See Stipulation at ¶¶ 7, 10 and 11. While respondent’s currently pending application is not the same one specified by application code/number in the Stipulation, it is the functional equivalent as respondent asserts it was filed in lieu of an appeal of the denial of his first application and clearly has been accepted and processed by OTDA, evidenced by the fact that it has been “provisionally approved”, although information and/or documentation apparently is still needed and OTDA has not yet made a final determination.

Accordingly, petitioner’s motion is denied and the ERAP stay will remain in place. See, e.g., *Robo LLC v Matos* (75 Misc3d 1211[A], 168 NYS3d 676 [Civ Ct Bx Co 2022]); *Harbor Tech LLC v Correa* [73 Misc3d 1211(A), 154 NYS3d 411 [Civ Ct Kings Co 2021]]; *Sea Park E LP v Foster* (74 Misc3d 213, 160 NYS3d 792 [Civ Ct Kings Co 2021]). The court also notes that it is evident from respondent’s opposition papers that he is close to securing funds from other sources to pay arrears due under the Stipulation that will not be covered by ERAP. As in *Mason v Reyes* (75 Misc3d 1210[A], 168 NYS3d 299 [Civ Ct Kings Co 2022]), “An approval by the ERAP program,

although perhaps not satisfying the entire rental arrears owed by a respondent, would assist in preserving a tenancy.”

CONCLUSION

Accordingly, it is hereby ORDERED that petitioner’s motion is denied, without prejudice to renewal following a “final determination” on respondent’s ERAP application. This constitutes the court’s Decision and Order, which is being uploaded to NYSCEF.



Hon. Diane E. Lutwak, HCJ

Dated: Bronx, New York
October 29, 2022

Petitioner’s Attorney:

Christine Panza, Esq.
Gold & Rosenblatt, LLC
840 Grand Concourse, Bronx, NY 10451
(718) 585-2511 cpanza@goldrosenblatt.com

Respondent’s Attorney

Sharone Miodovsky, Esq.
The Legal Aid Society, Bronx Neighborhood Office
260 East 161st Street, 7th Floor Bronx, NY 10451
(646) 995 – 8499 smiodovsky@legal-aid.org