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### 2 W 90th St Housing Corp v. Jamshidi

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART F

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2 W 90<sup>th</sup> ST HOUSING CORP

Index No. LT-305825-22/NY

Petitioner,

**DECISION/ORDER**

-against-

Motion Sequence 1

FARNAZ JAMSHIDI

Respondent.

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HON KAREN MAY BACDAYAN, JHC

*Law Office of Allison Furman, PC (Allison Furman, Esq.), for the petitioner*  
*The Legal Aid Society (Sheryl Karp, Esq.), for the respondent*

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc Nos: 7-17.

This is a nonpayment proceeding commenced against a cooperative shareholder. Respondent filed an Emergency Rental Assistance Program (“ERAP”) application which was denied on October 13, 2022 on the basis that respondent is a cooperative corporation shareholder and, as such, ineligible for ERAP funds. (NYSCEF Doc No. 9, petitioner’s exhibit A, ERAP Application Denial letter at 2 [“Co-op shareholders are not eligible for ERAP to cover monthly co-op/maintenance fees”].) Respondent filed an appeal of this decision and filed a notice to the court dated December 3, 2022 that an appeal had been filed and remained pending. (NYSCEF Doc No. 16, respondent’s exhibit F.) Respondent opposed petitioner’s motion to vacate the ERAP stay on the basis that Administrative Order (“AO”) 34/22, issued by Chief Administrative Judge Lawrence Marks on January 16, 2022, requires a stay of all proceedings where an ERAP application is pending and awaiting a “final determination” including and “appeal.” (ERAP Doc No. 10, respondent’s attorney’s affirmation ¶¶ 12 -18; NYCEF Doc No. 17, respondent’s exhibit F, AO/34/22.)

In reply, petitioner opposes the further stay on several grounds. First, petitioner argues that a stay is baseless because respondent is not eligible for ERAP as a cooperative shareholder. (NYSCEF Doc No. 29, petitioner’s attorney’s reply affirmation ¶ 16.) Second, petitioner argues that the appeal is untimely. (*Id.* ¶¶ 18-19.)

The court cannot begin to understand the mysterious process by which the Office of Temporary and Disability Assistance (“OTDA”) reviews, approves, and denies ERAP applications. Even more enigmatic is the process by which OTDA accepts and determines appeals. However, while numerous courts, including this judge, have held that the court has the authority to entertain the viability of an ERAP stay, given the lack of clear language regarding cooperative shareholders’ eligibility in the ERAP statute and the inconsistencies observed by this court regarding approvals and denials of applications for ERAP funds by shareholders, this court declines to speculate what OTDA may decide on appeal.<sup>1</sup> Moreover, regardless of whether the ERAP statute contemplated appeals, AO/34/22 is clear on its face and the court will defer to the Chief Administrative Judge who supervises the administration and operation of the Unified Court System; thus, the proceeding will remain on the ERAP administrative calendar pending the final determination of the pending appeal. (*See Gurevitch v Robinson*, 2022 NY Slip Op 32338 [U] [Civ Ct, Kings County 2022].)

Accordingly, it is

ORDERED that the proceeding will remain stayed as set forth above; and it is further ORDERED respondent’s attorney shall immediately inform petitioner’s attorney of the OTDA determination on the appeal when it is issued by OTDA; and it is further

ORDERED that either party may restore this proceeding to the calendar on 8 days’ written notice of motion for oral argument on the pending motion.<sup>2</sup>

This constitutes the decision and order of this court.

Dated: December 12, 2022  
New York, NY

So Ordered:

  
\_\_\_\_\_

Hon. Karen May Bacdayan  
HON. KAREN MAY BACDAYAN  
Judge, Housing Part

<sup>1</sup> Anecdotally, the court has seen many cooperative shareholders approved for ERAP, has seen many cooperative landlords accept ERAP, and has seen ERAP rescind and reverse approvals for cooperative maintenance arrears, even after issuance and negotiation of previously approved funds, and has seen payment to cooperative corporations prevent evictions.

<sup>2</sup> As determined on the record, respondent will not have an opportunity to reply to petitioner’s opposition to its cross-motion which was filed on December 6, 2022. (CPLR 2214)