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Townsend Ave. Realty Assoc. LLC v. Aquino De Henriquez

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[*1]

Townsend Ave. Realty Assoc. LLC v Aquino De Henriquez
2023 NY Slip Op 50019(U)
Decided on January 9, 2023
Civil Court Of The City Of New York, Bronx County
Lutwak, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on January 9, 2023

Civil Court of the City of New York, Bronx County

<p>Townsend Avenue Realty Associates LLC, Petitioner-Landlord,</p> <p>against</p> <p>Sugeldy Jeannette Aquino De Henriquez, Respondent-Tenant.</p>

Index No.: LT-303312-22/BX

Petitioner's Attorney:

Trudy-Ann Nicole Mckenzie, Esq.

McKenzie Law Group, P.C.

4200 White Plains Road

Bronx, NY 10466

347-913-4672

Respondent's Attorney:

Eliza Schafler, Esq.

Bronx Legal Services

369 E 148th Street, 2nd floor

Bronx, NY 10455-4041

718-233-1373

Diane E. Lutwak, J.

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NYSCEF #

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Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Petitioner's Motion to Vacate ERAP Stay (motion sequence #2):

BACKGROUND/PROCEDURAL HISTORY

This is a nonpayment eviction proceeding based upon a Petition seeking rent arrears of \$11,713.62, comprised of \$218.10 for May 2021, \$1277.28/month for April 2021 and \$1277.28/ month for June 2021 through February 2022. After Respondent failed to answer, Petitioner filed a motion pursuant to applicable Court Administration Orders and Directives seeking entry of a [*2] default judgment and issuance of a warrant of eviction. That motion was calendared, both sides appeared, and the case was adjourned for Respondent to seek legal assistance. Respondent retained counsel and, by stipulation, the case was adjourned, Petitioner's motion was withdrawn, the Petition was amended to date and Respondent was permitted to file an Answer. Prior to the adjourned date, Respondent's counsel filed notice of a pending "ERAP" (Emergency Rent Assistance Program) application, #V5EVQ. Accordingly, the case was stayed pursuant to L. 2021, c. 56, Part BB, Subpart A, § 8, *as amended*, L. 2021, c. 417, Part A, § 4 ("the ERAP statute").

PETITIONER'S MOTION TO LIFT ERAP STAY

Now before the court is Petitioner's motion seeking an order lifting the ERAP stay due to the denial of Respondent's ERAP application. The motion is supported by (1) an affidavit of Petitioner's managing agent Sam Applegrad stating, *inter alia*, that Respondent paid \$2630 since the Petition was filed and owed \$21,197.53 to date; (2) a printout from the "Check Application Status" website of the New York State Office of Temporary and Disability Assistance (OTDA) for ERAP application #V5EVQ, filed September 15, 2022, showing it had been denied by reason of "ineligible per program requirements: only prospective rent requested"; and (3) a rent ledger which, *inter alia*, reflects Petitioner's receipt on August 18, 2021 of an ERAP payment of \$16,604.64.

In opposition, Respondent's counsel asserts that the ERAP stay should remain in place because Respondent both appealed the denial of her ERAP application #V5EVQ and re-applied, application #5YYYYY. Respondent cites the ERAP statute which requires a stay of

"all proceedings pending a determination of eligibility" and Administrative Order 34/22 which states that ERAP stays continue until there is a "final determination of eligibility including appeals."

DISCUSSION

Section 9 of the ERAP statute provides: "No more than 12 months of rental and/or utility assistance for arrears and 3 months of prospective rental assistance may be paid on behalf of any eligible household." OTDA interprets this to mean that while a household may apply more than once, if ERAP pays twelve months of rent arrears and declines to approve three months of prospective rent, a subsequent application for prospective rent only is not permitted. This rule is stated on OTDA's ERAP website home page, where a list of reasons why "applications submitted to the ERAP portal will be denied" includes "Households that have already received 12 months of ERAP assistance for rental arrears."

<https://otda.ny.gov/programs/emergency-rental-assistance/#overview>

Here, it is undisputed that OTDA made a final determination of Respondent's ERAP eligibility when it approved Respondent's first of three applications and paid Petitioner \$16,604.64 on August 18, 2021, covering twelve months of rent arrears and one month of prospective rent at \$1277.28/month. [\[FN1\]](#) Respondent did not appeal this determination. Instead, [\[*3\]](#) over a year later Respondent reapplied twice more, apparently trying to secure two additional months of prospective rent, the maximum possible additional benefit under the ERAP statute.

Based upon OTDA's rule that applications submitted by households that have already received twelve months of ERAP assistance for rental arrears will be denied, it is evident that Respondent will not be successful in her efforts to secure additional ERAP funds. Accordingly, Respondent's pending appeal of the denial of her second application, and her recently filed third application, are futile and it is appropriate at this juncture to lift the ERAP stay and allow this proceeding to continue. *See, e.g., Leshchinsky v Lutula* (77 Misc 3d 1206[A][Civ Ct NY Co 2022]); *5th & 106th St Assocs LP v Hunt* (76 Misc 3d 338, 172 NYS3d 354 [Civ Ct NY Co 2022]).

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Petitioner's motion is granted, the ERAP stay is lifted and this proceeding is restored to the Court's calendar for an in-person, pre-trial conference on **February 9, 2023 at 11:00 a.m.** Respondent's Answer shall

be filed on NYSCEF by January 30, 2023. This constitutes the Decision and Order of the Court.

Dated: January 9, 2023
Bronx, New York
Diane E Lutwak, HCJ

Footnotes

Footnote 1: Under the ERAP statute, the court is permitted access to ERAP application information "for the purposes of ensuring the availability for the eviction protections." L. 2021, c. 56, Part BB, Subpart A, § 6(4)(b), *as amended*, L. 2021, c. 417, Part A, § 3. Pursuant to this authority, the court has reviewed Respondent's ERAP information to confirm her filing of three applications and the status of each: #N5UBJ, filed 6/17/21, paid in the amount of \$16,604.64; #V5EVQ, filed 9/15/22, denied; #5YYYY, filed 12/13/22, pending.

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