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Sixteen Elliot Inc. v. Contreras Lopez

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

-----X
SIXTEEN ELLIOT INC.

Petitioner,

Motion Seq. No.: 0001, 0002

Index No. 314330-22/BX

-against-

DECISION/ORDER

MARCOS A. CONTRERAS LOPEZ
MARIA CRUZ SOLIS

Respondents,
-----X

Recitation, pursuant to CPLR § 2219 of the papers considered in review of the motion:

PAPERS

NUMBERED

Notice of Motion and Affidavits Annexed with Exhibits

1 (NYSCEF #5-13)

Opposition and Notice of Cross Motion Affidavits Annexed with Exhibits

2 (NYSCEF #14-20)

Affirmation in Opposition and Reply

3 (NYSCEF #21)

LYDIA C. LAI, Judge:

This is a nonpayment proceeding commenced by service of a petition and notice of petition filed May 20, 2022 seeking rental arrears in the amount of \$9,033.49 for the period of November 2021 through March 2022. Respondent Maria Cruz Solis (“respondent”) filed a *pro se* answer and later retained The Legal Aid Society.¹ On July 26, 2022, the Court placed this matter on the administrative ERAP stay calendar upon proof of respondent’s ERAP administrative appeal. The parties agree that the ERAP program issued a payment for respondent in September 2021 in the amount of \$23,366.70, and that in August 2022 the program issued a recoupment notice for the same amount. The parties further agree that respondent filed an appeal in July 2022 with the Office of Temporary and Disability Assistance (“OTDA”).

¹ Respondent Marcos A. Contreras Lopez has not appeared.

Petitioner now moves to lift the ERAP stay, and respondent opposes and cross-moves seeking to have the proceeding remain on the ERAP administrative calendar.

Petitioner's Motion

Petitioner moves to lift the ERAP stay, arguing that Chapter 56, Laws of 2021, Part BB Subpart A, as amended by Chapter 417 ("ERAP") section 8 requires a stay only pending "a determination of eligibility." Petitioner argues that here, the ERAP program approved respondent for \$23,366.70 of rental arrears in September 2021, the law requires an appeal within 30 days of the determination, respondent's administrative appeal in July 2022 is untimely and therefore the ERAP stay provisions should not apply. Petitioner further argues that an administrative appeal of an ERAP determination does not require a stay of the proceeding because the administrative agency already issued a "determination," and the law does not require such determination to be "final and binding." Petitioner contends this distinction requires the Court to ignore any pending appeals because ERAP has already decided on respondent's application within the meaning of the statute.

Petitioner also argues that a further stay of this matter would constitute an unconstitutional violation of petitioner's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution. Petitioner asserts that continuing a stay pending an ERAP appeal deprives a landlord of any "right to be heard" pending appeal. Citing *Chrysafis v. Marks*, 141 S. Ct. 242 (2021), petitioner argues that similar to the CEEFPA, the ERAP statute contains no provision allowing a landlord to challenge an ERAP stay, thus the ERAP statute should be found unconstitutional by this Court on the same analysis used by the Supreme Court in *Chrysafis*. Petitioner additionally argues that Administrative Order 158/28 (AO 158/28) directing ERAP stays remain in place "until a final determination of eligibility...including an

appeal” issued by Judge Lawrence Marks is unconstitutional because it “takes away” substantive rights without due process.

Respondent opposes the motion and cross moves seeking to continue the ERAP stay, arguing that the legislative intent of the ERAP statute seeks to protect tenants from hardships such as this, that the constitutionality of the ERAP statute was not implicated by the United States Supreme Court decision in *Chrysaftis v. Marks*, 141 S. Ct. 242 (2021), which only contained analysis of the CEEFPA and not the ERAP statute. Respondent additionally cites *Harbor Tech LLC v. Correa*, 73 Misc.3d 1211(A) (Civ. Ct. Kings Co. 2021), arguing that this Court should adopt the analysis in *Harbor Tech*, which rejected a landlord’s argument that the ERAP statute is unconstitutional as it denies a landlord due process, noting that “staying or otherwise restricting litigation to resolve a dispute by alternative means does not deny due process.” (*Harbor Tech LLC v. Correa*, 73 Misc.3d 1211(A) [Civ. Ct. Kings Co. 2021]). In reply, petitioner argues that the cases cited by respondent are distinguishable in that no determination had been made in those cases, or that the appeals were based on alleged “fraud” of the landlord.

Petitioner’s contention that an ERAP stay when applied to a proceeding with a pending appeal of an ERAP determination with OTDA is unconstitutional, is unavailing. Petitioner argues that there is a “lack of remedy” for a landlord to challenge an ERAP stay. However, petitioner here has made a motion to challenge the ERAP stay, and the Court has considered arguments on both sides. There is no provision of the ERAP statute that prevents a landlord from moving the Court to challenge the stay. Indeed, civil courts around New York City have found that courts have the authority to lift an ERAP stay and have heard landlord’s challenges to ERAP stays, and in some cases, lifted stays. (*See 2986 Briggs LLC v. Evans*, 74 Misc.3d

1224(A) [Civ. Ct. Bronx Co. 2022]). For example, courts have found ERAP stays inapplicable in unregulated units where respondents have no contractual obligation to pay rent (*see Actie v. Gregory*, 74 Misc.3d 1213[A] [Civ. Ct. Kings Co. 2022]; *Kelly v. Doe*, 75 Misc.3d 197 [Civ. Ct. Kings Co. 2022]), and in cases where respondent cannot show a colorable claim of eligibility under the ERAP guidelines (*See 5th & 106th St. Assoc. LP v. Hunt*, 76 Misc.3d 338 [Civ. Ct. N.Y. Co. 2022]).

Here, there is no allegation that respondent is an occupant without an obligation to pay rent, nor is there any allegation that the appeal is futile, and/or that respondent is not eligible for funds. Rather, this is a nonpayment proceeding in a rent regulated unit and the named respondent received a recoupment notice for a previously granted ERAP payment, causing the alleged arrears to increase by approximately \$23,000. Respondent promptly filed an appeal after receiving notification of the recoupment. The recoupment notice included with both petitioner's motion and respondent's cross-motion states the original application did not meet "program requirements" "and/or documentation provided with the application could not be confirmed through public records reviewed during the eligibility determination." Respondent asserts in her affidavit that all required documents were resubmitted with the appeal and she questioned whether the documents referenced in the notice were the landlord's obligation to provide. The notice does not make clear which documents were disputed by the agency. The Court is unable to supplant its own determination for that of OTDA under the facts presented here. Moreover, the outcome of the appeal will necessarily impact this nonpayment proceeding. (*See Harbor Tech LLC v. Correa*, 73 Misc.3d 1211[A] [Civ. Ct. Kings Co. 2021]).

Further, the United States Supreme Court's analysis in *Chrysaifis* is not applicable here. The hardship stays contemplated in *Chrysaifis* left the landlord with no means to dispute the

unilateral invocation of the stay by a tenant. Civil Court however retains discretion to vacate an ERAP stay on motion of a landlord. (*See 5th & 106th St. Assoc. LP v. Hunt*, 76 Misc.3d 338 [Civ. Ct. N.Y. Co. 2022] *citing Laporte v. Garcia*, 2022 N.Y. Slip. Op. 22126 [Civ. Ct. Bronx Co. 2022].) Thus, the due process concerns implicated by CEEFPA hardship stays do not apply. (*See Harbor Tech LLC v. Correa*, 73 Misc.3d 1211(A) [Civ. Ct. Kings Co. 2021]).

Conclusion

Petitioner's motion seeking to lift the ERAP stay is denied, respondent's cross motion to stay the proceeding pending determination of the appeal with OTDA is granted, and this matter is placed on the administrative ERAP calendar.

This is the decision and order of the Court.

Dated: Bronx, New York
December 27, 2022


LYDIA C. LAI, J.H.C.

SO ORDERED
Hon. J. [Signature]