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ZENNETH REALTY CORP. v. LABOY

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

-----X
ZENNETH REALTY CORP.,

L&T Index No. 008471/20

Petitioner,

-against-

DECISION/ORDER

JAVIER LABOY,
MARIA LABOY,

Respondents.
-----X

Present: Hon. OMER SHAHID
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner’s Motion to Vacate the E.R.A.P. Stay (Motion #3 on N.Y.S.C.E.F.):

| Papers | Numbered |
|---|----------|
| Notice of Motion (Motion #3 on N.Y.S.C.E.F.)..... | <u>1</u> |
| Affirmation and Affidavit in Opposition (Entries #24-25 on N.Y.S.C.E.F.)..... | <u>2</u> |
| Affirmation in Reply (Entries #26-27 on N.Y.S.C.E.F.)..... | <u>3</u> |

Petitioner moves to vacate the E.R.A.P. stay on the ground that Respondent Maria Laboy’s second E.R.A.P. application was denied. Respondent opposes the motion and argues that the matter should remain on the E.R.A.P. administrative calendar due to a pending appeal of O.T.D.A.’s determination on the second application.

Section 8 of Part BB, Subpart A of the E.R.A.P. Statute provides in pertinent part: “[I]n any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility.” L. 2021, Ch. 56, Part BB, Subpart A, § 8 as amended by L. 2021, Ch. 417, Part A, § 4. The exception to this language appears in Section 9-A of the E.R.A.P. Statute which concerns proceedings where respondents are committing nuisance or objectionable conduct, which is not the case here.

A final determination of eligibility has not been made because Respondent has filed an appeal with O.T.D.A. challenging its determination. A.O./158/22 provides in pertinent part: “Eviction matters where there is a pending ERAP application shall continue to be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance (OTDA), including appeals.” A.O./158/22, ¶ 5 (emphasis supplied). Since an appeal is

pending, a final determination of eligibility has not been made. Thus, the stay associated with Respondent's application shall continue pending O.T.D.A.'s determination of the appeal.

Based upon the foregoing, Petitioner's motion to vacate the E.R.A.P. stay is hereby denied in its entirety since a final determination upon Respondent's application is still pending before O.T.D.A. The matter shall remain on the E.R.A.P. administrative calendar pending determination of the appeal. Once determination of the appeal has been made, either party may reach out to the Part and request that the matter be placed back on the court's active calendar.

The foregoing constitutes the decision and order of the court.

Dated: April 11, 2023
Bronx, N.Y.



Omer Shahid, J.H.C.