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2023-04-04

Pitkin Place LLC v. Belcher

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"Pitkin Place LLC v. Belcher" (2023). *All Decisions*. 945.
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Pitkin Place LLC v Belcher
2023 NY Slip Op 50268(U) [78 Misc 3d 1220(A)]
Decided on April 4, 2023
Civil Court Of The City Of New York, Kings County
Jimenez, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 April 4, 2023

Civil Court of the City of New York, Kings County

Pitkin Place LLC, Petitioner,
against
Freddy Belcher and Deyen Key, Respondents.

Index No. 305000/22

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Sergio Jimenez, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's motion seeking to vacate the ERAP statute and any other relief as the court may find appropriate:

Papers Numbered

Notice of Motion with affidavits and exhibits 1 (NYSCEF No.6-9)

Affirmation in Opposition and exhibits 2 (NYSCEF #11-13)

Affirmation in Reply 3 (NYSCEF #14)

The instant motion seeks to vacate the ERAP stay. It is undisputed that the application remains pending. The parties, both represented by counsel, fully briefed the issue, and the court heard argument on March 20, 2023. Upon hearing argument, the court reserved decision.

Petitioner's Motion

Petitioner seeks to vacate the ERAP stay stating that the respondent, being a subsidized housing tenant has a low priority and that the amount of time the application has been pending is prejudicial to the petitioner. Respondent opposes stating that a determination has not yet been made.

After argument, motion is denied. The ERAP statute has no subsidized housing exemption. The court finds petitioner's argument that OTDA's website provides a blanket determination for all subsidized housing to be unavailing. Respondent has a pending ERAP application; the statute mandates a stay until a "determination of eligibility is made" (L 2021, ch 56, part BB, subpart A, §8). The court, when presented by tenants with the informational email of an approval, does not take the quasi-legal advice being given to be binding upon the court. Likewise, it will not accept OTDA's general non-specific (as to this respondent's eligibility) informational website to either be binding on this court or a "determination" for the purposes of statutory interpretation. In the same way that it is not the providence of OTDA to make judicial findings of statutory applicability, it is not within the purview of the court to make eligibility determinations (see [Savy Props. 26 Corp. v James, 76 Misc 3d 1214\[A\]\[Civ Ct Kings County, 2022\]](#)). As such, respondent is entitled to a court stay of this proceeding until there is an eligibility determination on the application or if circumstances change.

Conclusion

Petitioner's motion to vacate the ERAP stay is denied for the reasons set forth above.

Proceeding remains on the ERAP administrative calendar. This constitutes the Decision and Order of the Court.

Dated: April 4, 2023
Brooklyn, New York
Sergio Jimenez, JHC

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