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2023-07-02

### 2104 Hughes Ave Corp. v. Elliot

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS, HOUSING PART S

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2104 Hughes Ave Corp.

Index No. LT-304780-21

Petitioner-Landlord

DECISION/ORDER

Motion Seq #2

-against-

Zeederwan Elliot,

Respondent-Tenant(s)

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Present: Hon. Tashanna B. Golden

Recitation as required by CPLR 2219(a), of the papers considered in the review of the  
Petitioner's Motion to restore and to Vacate the ERAP stay:

<b>Papers:</b>	<b>Numbers</b>
Petitioner's Motion, Affirmation in Support, and Exhibits.....	20-24
Respondent's Affirmation in Opposition and Exhibits.....	25-28
Court File.....	Passim

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Petitioner filed this instant non-payment proceeding on or about May 28, 2021 seeking a final money judgment in the amount of \$4,450.00 for the premises located at 62-41 Forest Avenue, Apt 5A, Ridgewood, New York, 11201 from respondent, Zeederwan Elliot. On or about July 19, 2021, Petitioner, by counsel filed a Motion to restore pursuant to the pertinent administrative orders and DRP's, seeking to restore the case to the calendar and to amend the petition to date. On or about August 3, 2021, the Respondent submitted a pro se answer. On or about December 17, 2021, Legal Aid Society ("LAS"), by Ryan Miller, filed a notice of appearance on behalf of the Respondent. On the same day, a Respondent filed a Hardship Declaration. On or about January 31, 2022, Respondent filed a notice of ERAP application, which was corrected on February 1, 2022. On or about February 2, 2023 Petitioner filed the instant motion to restore the matter to the calendar pursuant to AO 34/22, AO 245/21, DRP 217,

DRP 221, and DRP 222; and to vacate the ERAP stay based on Petitioner's refusal to participate in and receive payment from ERAP.

ERAP under Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2020, as modified by L. 2021, c. 416, remain fully effect ("the act" or "ERAP statute").<sup>1</sup> Pertinent parts of the act states:

"Restrictions on eviction. Except as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible for coverage under this program shall not be commenced against a household who has applied for this program or any local program administering federal emergency rental assistance program funds unless or until a determination of ineligibility is made. Except as provided in section nine-a of this act, in 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. Evidence of a payment received pursuant to this act or a local program administering federal emergency rental assistance program funds may be presented in such proceeding and create a presumption that the tenant's or occupant's rent or utility obligation for the time period covered by the payment has been fully satisfied."

The stay applies in both non-payment and holdover matters and there are limited exceptions as outlined in the ERAP statute. Petitioner's lack of desire to participate in the ERAP process is not one of them. The undisputed facts are as follows: 1) the Respondent's tenancy is subject to Section 8; 2) the Petitioner filed a nonpayment petition alleging rental arrears; 3) the Respondent applied for ERAP to cover rental arrears; 3) at some point, the ERAP application was provisionally approved; 4) subsequent to the provisional approval, OTDA advised the Petitioner that because the Respondent was a Section 8 beneficiary they would be last in line and therefore the provisional approval was withdrawn, but that despite the change in approval status, the application would remain pending and under review.

As of May 15, 2023, ERAP applications are no longer being accepted and applications submitted prior to the application portal's closure on January 20, 2023 "including applications from subsidized housing tenants whose rent is limited to a certain percentage of income

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<sup>1</sup> See Administrative Order ("AO") 34/22 dated January 16, 2022.

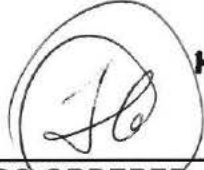
(including public housing, section 8 and FHEPS) are being reviewed and processed in the order received."<sup>2</sup> Therefore, at this time, ERAP applications submitted by Section 8 tenants prior to the application portal's closure—such as Respondent's application—can and may possibly be paid, as consistent with State law and program rules. As of June 6, 2023, the Respondent's application status was "pending".

In nonpayment proceedings against Section 8 tenants, some courts have declined to vacate the ERAP stay, *see e.g. Robo LLC v. Matos*, 75Misc3d 1211[A], 168 NYS3d 676 (Civ Ct Bx Co 2022); *14 N Highstreet, LLC v. Clowney*, 76 Misc3d 768, 172 NYS3d 824 (City Ct Mt Vernon, Aug 23, 2022); and others have granted motions to vacate *see e.g. EG Mt Vernon Pre LP v. Duncan* (2023 NY Slip Op 50044 [U], 77 Misc3d 1206[A] (Civ Kings Co., Nov 21, 2022). The primary purpose of the ERAP statute is to prevent evictions by paying a landlord rental arrears owed by an eligible tenant. Eligibility is determined solely by OTDA.<sup>3</sup> Here, the Petitioner has brought a non-payment matter, and alleges \$19,123.74.00 in outstanding arrears as of the date of the motion, an ERAP payment would significantly reduce that which is owed.

For the reasons stated supra, Petitioner's motion to vacate the stay triggered upon respondent, Zeederwan Elliot's filing an ERAP application is denied. Therefore, this matter remains on the ERAP calendar until there is a determination.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York  
July 2, 2023

  
**Hon. Tashanna B. Golden**  
**Judge, Housing Court**

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SO ORDERED  
HON. TASHANNA B. GOLDEN  
JUDGE, HOUSING COURT

<sup>2</sup> See OTDA website.

<sup>3</sup> See ERAP, L 2021, ch 56, Part BB, Subpart A, Section 1(3).