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PULASKI MANOR ASSOCIATES v. LIPSCOMB

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Civil Court of the City of New York
County of Kings

Index # **LT-328581-22/KI**



PULASKI MANOR ASSOCIATES

Petitioner(s)

Decision / Order

-against-

TANISHA LIPSCOMB

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 5-11
Answering Affidavits/ Affirmations	NYSCEF 14
Reply Affidavits/ Affirmations	_____
Memoranda of Law	_____
Other	_____

For the reasons stated below, the court denies petitioner’s motion to vacate the ERAP stay currently in effect, hold a hearing as to whether respondent is eligible for ERAP funds, or issuing a conditional order that any stays are dependent on the payment of ongoing rent.

Petitioner initiated this nonpayment proceeding in December 2022, against the respondent alleging that respondent owed \$7,734.00 in rental arrears at that time. The respondent answered the petition on December 23, 2022. In her answer, respondent alleged that she had an ERAP application pending. As a result, the court stayed these proceedings as required by the ERAP statute on February 21, 2023. (L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 8, as amended by L 2021, ch 417, § 2, part A, § 1). Petitioner now brings this motion seeking to vacate the stay issued or for alternative relief.

The Office of Temporary and Disability Assistance (“OTDA”), charged with overseeing disbursement of ERAP funds, has heretofore prioritized the applications of tenants who do not receive rental subsidies over those who do. As a result, the applications of tenants such as Ms. Lipcomb have remained pending for long periods of time. Because there is a finite amount of funds available to ERAP applicants, the common wisdom until recently had been that the ERAP

coffers would run dry before the applications of subsidized tenants were processed. Meanwhile, the arrears that these subsidized tenants allegedly owe continue to grow. In many instances, the arrears have allegedly ballooned to an amount much larger than the fifteen months that ERAP proposes to pay, and these matters cannot be resolved so long as the stay remains in effect.

Petitioner herein asks the court to vacate the ERAP stay, arguing that the prejudice suffered by the petitioner in waiting for the ERAP determination outweighs any benefit of the stay if there are substantial arrears owed after the stay is lifted.

The court denies petitioner's motion for two reasons. The first is that the plain text of the ERAP statute requires that the stay remain in effect, and the court is required to follow the plain text of the statute. *Ami v. Ronen*, 2023 N.Y. Slip Op. 50456(U) (AT 2nd Dep't, Apr. 28, 2023). The statute requires that every nonpayment and holdover proceeding be stayed "until a determination of ineligibility is made." *Id.* (quoting L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 8, as amended by L 2021, ch 417, § 2, part A, § 1). The petitioner may be entitled to vacate the stay if petitioner claims that the respondent engaged in nuisance behavior, but that is not applicable here. (L 2021, ch 56, § 1, part BB, § 1, subpart A, sec 1, § 9-a, as amended by L 2021, ch 417, § 2, part A, § 6). As such, the ERAP statute requires that the proceeding remain stayed until such time as Ms. ^{Lipscomb} [REDACTED]'s application is decided or the legislature changes the terms of the stay.

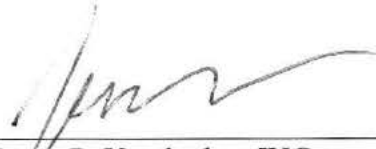
Recent budgetary developments also support the court's denial of petitioner's motion. The recently passed state budget allots \$391 million to support subsidized tenants with pending ERAP applications. ("Governor Hochul Announces Support for Homeowners, Tenants and Public housing Residents as Part of FY 2024 Budget", <https://www.governor.ny.gov/news/governor-hochul-announces-support-homeowners-tenants->

and-public-housing-residents-part-fy-2024, *last retrieved on May 19, 2023.*) As such, petitioner's claim that Ms. Lipscomb would likely not receive ERAP funding now appears mistaken. Absent that rationale, the court lacks any justification to lift the ERAP stay. The court also see no need to order a hearing as to whether a stay is required. The respondent has shown an entitlement to the stay as she has demonstrated that her application currently remains pending with OTDA.

ORDERED: Petitioner's motion is denied. This matter remains STAYED.

This is the decision and order of the court, which will be distributed to the parties via NYSCEF.

Dated: Brooklyn, NY
May 23, 2023



Jason P. Vendzules, JHC