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Bhuiyan v. Oliveras

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CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART K-SPP

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L&T Index # 315025/2023

SHARIF BHUIYAN,
Petitioner-Landlord,

-against-

DECISION & ORDER

JACKIE OLIVERAS, Tenant, and
"JANE DOE"/"JOHN DOE", Occupants-Undertenants,
Respondents-Tenants.

-----X

Hon. Diane E. Lutwak:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Petitioner’s Motion to Vacate ERAP Stay and Respondent’s Cross-Motion to Dismiss, consolidated herein for determination:

PAPERS

NYSCEF DOC #

Petitioner’s Notice of Motion, Affirmation, Affidavit, Exhibits A-B	8
Respondent’s Notice of Cross-Motion	11
Respondent’s Affidavit	12
Affirmation in Support of Cross-Motion	13
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PROCEDURAL HISTORY

This is a holdover eviction proceeding based upon a 90-day notice terminating a month-to-month tenancy as of March 31, 2023. The Petition, filed on April 2, 2023, asserts that the tenancy is not subject to Rent Control or Rent Stabilization because the apartment is in a two-family dwelling; Respondents owe rent and/or use and occupancy of \$30,400 (January 2022 through April 2023 at \$1900/month) and Petitioner seeks possessory and money judgments. After an initial appearance in Intake Part 1 on May 25, 2023 the case was transferred to Resolution Part K-SPP and adjourned to June 15, 2023. Respondent Jackie Oliveras retained counsel who, on June 12, filed notice of an application pending at the New York State Office of Temporary and Disability Assistance (OTDA) for “ERAP” (COVID-19 Emergency Rent Assistance Program) with a request to stay the proceeding, citing the ERAP statute, L. 2021, ch. 56, Part BB, § 1, Subpart A, § 8, as amended by L. 2021, ch. 417, Part A, § 4.

Petitioner immediately filed a motion on June 13, 2023 seeking to vacate the ERAP stay, supported by his affidavit in which he explained that he had accepted ERAP funds in December 2021 on behalf of Respondent; waited a year before terminating Respondent's tenancy and commencing this proceeding; learned that Respondent had filed a second ERAP application on September 22, 2022; and then "informed Respondent, and called ERAP to inform them" that he was not going to accept additional ERAP funds, Petitioner's Affidavit at ¶ 4.

On June 15 Petitioner's motion was adjourned by stipulation to August 2 with a briefing schedule. Prior to the adjourned date, OTDA approved Respondent's second ERAP application and the parties by counsel again adjourned the case by stipulation which set up a new briefing schedule and noted that Respondent's ERAP application had been approved on July 12.¹

Instead of opposing Petitioner's motion to vacate the ERAP stay Respondent moved to dismiss based on the ERAP statute's prohibition against commencement of a holdover or nonpayment proceeding against a household who has applied for ERAP "unless or until a determination of ineligibility has been made," L. 2021, ch. 56, Part BB, § 1, Subpart A, § 8, as amended by L. 2021, ch. 417, Part A, § 4, citing to *Youngstar Irrevocable Tr v Paetz* (78 Misc3d 135[A], 187 NYS3d 476 [App Term 2nd Dep't 2023]). Respondent pointed to the undisputed fact that her second ERAP application, filed on September 22, 2022, was still pending when Petitioner commenced this holdover proceeding. Further, Petitioner failed to submit notice of that ERAP application to the court as required by Administrative Orders 34/22 and 244/21. Respondent also asserts that Petitioner received \$9500 from OTDA under the second ERAP application in July 2023 and argues, in the alternative, that Petitioner is also prohibited from evicting her for twelve months under another section of the ERAP statute, L. 2021, ch. 56, Part BB, § 1, Subpart A, § 9(2)(d)(iv), as amended by L. 2021, ch. 417, Part A, § 5(d)(iv).

In opposition to Respondent's cross-motion Petitioner reiterates that, "Once I was informed that Respondent had submitted a second ERAP application, I both informed Respondent, and called ERAP, to inform them that I was not going to cooperate with the application, and that I did not want to receive any further ERAP monies, because I wanted to evict Respondent and regain possession of the subject apartment." Petitioner's Affidavit in Opposition to Cross-Motion at ¶ 4. In addition, Petitioner asserts that he returned the \$9500 OTDA paid him under Respondent's second ERAP application and provides supporting documentation of the return of these funds.

¹ This adjournment stipulation also mentioned that an appeal of the ERAP approval had been filed on July 19. However, that appeal has now been closed out, see Exhibit G to Petitioner's Opposition to Respondent's Cross Motion (NYSCEF Doc. # 22, last 2 pages), and is of no legal consequence to the analysis in this Decision and Order.

Petitioner's attorney argues that Petitioner is permitted to proceed with this case as there is no ERAP application pending and the twelve-month eviction prohibition does not apply due to Petitioner's return of the \$9500 to OTDA. Regarding the statutory prohibition on commencing a case when an ERAP application is pending, Petitioner argues that this is a weak argument that should be deemed waived due to Respondent's failure to raise it earlier in the proceeding; the Appellate Term's decision in *Youngstar Irrevocable Tr v Paetz, supra*, is not controlling; and the court should instead follow the decision of Housing Court Judge Thermos in *Rincher v Mignott* (2023 NY Slip Op 23227 [Civ Ct Qns Co, July 12, 2023]).

DISCUSSION

At this juncture it is undisputed that the ERAP stay should be vacated, as Respondent's second ERAP application is no longer pending. Further, as Petitioner did not commence this proceeding until more than twelve months after receiving ERAP funds in December 2021 under Respondent's first ERAP application, and Petitioner returned the \$9500 which OTDA approved and paid on Respondent's second ERAP application, the ERAP statute's twelve-month eviction prohibition, L. 2021, ch. 56, Part BB, § 1, Subpart A, § 9(2)(d)(iv), as amended by L. 2021, ch. 417, Part A, § 5(d)(iv), is not an issue in this proceeding.


The only question remaining is the effect on this proceeding of the ERAP statute's prohibition against commencement of a holdover or nonpayment proceeding against a household that has applied for ERAP "unless or until a determination of ineligibility has been made," L. 2021, ch. 56, § 1, Part BB, Subpart A, § 8, as amended by L. 2021, ch. 417, Part A, § 4. In interpreting the ERAP law, the Appellate Term, First Department has stated: "It is a fundamental principle of statutory interpretation that a court should attempt to effectuate the intent of the Legislature (see McKinney's Cons Laws of NY, Book 1, Statutes, § 76), and where the statutory language is clear and unambiguous, the court should construe the statute to give effect to the plain meaning of the words used." *Bank of NY Tr Co, NA v Courtney* (78 Misc3d 27, 29, 188 NYS3d 356, 358 [App Term 1st Dep't 2023]).

The statutory language is clear and unambiguous: a landlord is prohibited from commencing a holdover or nonpayment eviction proceeding against a household with a pending ERAP application. The Appellate Term, Second Department squarely addressed this issue in *Youngstar Irrevocable Tr v Paetz* (78 Misc3d 135[A], 187 NYS3d 476 [App Term 2nd Dep't 2023]), where it perfunctorily affirmed the lower court's dismissal of a holdover proceeding commenced while an ERAP application was pending. In that case the ERAP application had been submitted seven months before the proceeding was commenced, the "landlord sought possession of a house after service upon tenant of a 90-day notice to quit" and the petition sought use and occupancy. Just as in that case, this proceeding must be dismissed under the clear and unambiguous statutory language prohibiting commencement of a holdover or nonpayment eviction proceeding while an ERAP application is pending.

The case Petitioner cites, *Rincher v Mignott, supra*, involves different facts and different sections of the ERAP statute. In *Rincher* the tenant's ERAP application was filed *after* commencement of the proceeding and what was before the court was the landlord's motion to vacate the ERAP stay, supported by "proof that Petitioner notified OTDA of its intention not to participate in the ERAP program." In deciding to vacate the ERAP stay – and upholding this ruling on Respondent's motion to renew and reargue – Judge Thermos analyzed the section of the ERAP statute that creates an outreach process OTDA must follow before making an eligibility determination, L. 2021, ch. 56, § 1, Part BB, Subpart A, § 9(2)(b) as amended by L. 2021, ch. 417, Part A, § 5, and concluded that OTDA's outreach process had been completed under § 9(2)(b)(iii): the landlord had provided proof it had given OTDA written notice of his intent not to participate in the program, thereby ending OTDA's outreach process and warranting vacatur of the statutory stay of the eviction proceeding. Here, not only was Respondent's second ERAP application filed *before* commencement of this proceeding but Petitioner did not offer proof that he had given OTDA written notice of his intent not to participate until *after* OTDA already had made an eligibility determination.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that both Petitioner's motion to vacate the ERAP stay and Respondent's cross-motion are granted and this proceeding is dismissed, without prejudice. This constitutes the Decision and Order of the Court, which is being uploaded on NYSCEF.



Diane E. Lutwak, HCJ

Dated: Bronx, New York
September 26, 2023