SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON _____ PART 41B

Justice

Index Number : 104532/2012
SEDGWICK MANAGEMENT LLC
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ petition/article 78 proceeding + cross motion are decided per attached

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/28/13

_____, J.S.C.
HON. PETER H. MOULTON

1. CHECK ONE: ..... ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☑ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 40 B

- -X

In the Matter of the Application of SEDGWICK MANAGEMENT, LLC

Index No. 104532/12

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent.

- -X

PETER H. MOULTON, J.S.C.:

Petitioner, a landlord, brings this Article 78 proceeding to reverse the decision of respondent New York City Housing Authority ("NYCHA") to terminate two section 8 subsidies after the apartments occupied by Evelin Castillo and Antonia Martell failed to meet federal housing quality standards ("HQS"). Petitioner seeks to recoup $26,410.09 for rental payments for the period November 1, 2011 through August, 2012. The claim asserted concerning Edwin Rodriquez's apartment was withdrawn by email dated July 1, 2013.

Respondent cross moves to dismiss the petition as time barred. Respondent maintains that petitioner should have commenced this action within four months of November 1, 2011, when respondent maintains petitioner knew or should have known that the subsidies were suspended. Thus, respondent asserts that this

proceeding, which was commenced more than one year after termination of the subsidies, is untimely.

Respondent attaches a copy of a letter addressed to petitioner, dated September 12, 2011, notifying petitioner that apartment 3 F at 2800 Sedgwick Avenue needed repair of "uneven floor-severe." The notice also provided that the repairs must be made and verified by respondent, or respondent would take action to terminate the subsidy on October 12, 2011. Respondent also attaches copy of a letter addressed to petitioner, dated September 7, 2011, notifying petitioner that apartment 4 E at 2800 Sedgwick Avenue needed repair of windows. The notice also provided that the repairs must be made and verified by respondent, or respondent would take action to terminate the subsidy on October 7, 2011.

Respondent attaches the affidavit of Joseph Lamarca, the Deputy Director of the General Services Department. He attests to to the general business practices of mailing NE-1 notices within one business date of the date indicated on the notice, from respondent's mail center.

The notices provided in relevant part:

> [W]e will take action to suspend subsidy on 09/09/2011, unless we are properly notified (see below) that appropriate repairs have been made and we verify these corrective measures.

They further provided:

FAILURE TO COMPLETE REPAIRS AND HAVE THE AUTHORITY VERIFY THAT THE REPAIRS ARE DONE **WITHIN 30 DAYS AFTER THE INSPECTION** SHALL RESULT IN SUSPENSION OF SUBSIDY. REINSTATEMENT OF SUBSIDY WILL NOT BE CONSIDERED UNTIL WE RECEIVE AND ACCEPT THE CERTIFICATION, OR UNTIL WE RECEIVE NOTIFICATION OF COMPLETED REPAIRS FROM YOU AND WE REINSPECT THE APARTMENT TO DETERMINE THAT THE UNIT AGAIN COMPLIES WITH HQS.

In opposition to the cross motion, petitioner contends that the agency should be estopped from asserting the statute of limitations because of misrepresentations made by respondent, which delayed the filing of this proceeding. Petitioner attaches "Petitioner's call logs" and the affidavit of Keyoumars Keypour, petitioner's managing agent. Petitioner does not explain who prepared the typed written logs. The logs reflect communication commencing only in February, 2012-more than three months after the payments were stopped. The logs also do not reflect that the petitioner was told to "wait for the subsidy to be restored" as asserted by Keypour. Keypour never states that he was personally told to wait, although he asserts that both he and "his office" made the calls. Keypour also asserts that petitioner sent a certification attesting to correction of the HQS violations on September 29, 2011 for apartment 3 F. He attaches a facsimile cover sheet addressed to an unidentified fax number, dated September 30, 2011, which indicates that only one page was sent,

which appears to be the first page of the NE-1 notice for apartment 3 F.

In reply, respondent notes that estoppel is generally unavailable against a government agency and that petitioner failed to establish that an extraordinary situation existed which would permit deviation from the general rule. Respondent points to the lack of foundation for the call logs as a business record and the lack of specificity as to nature of the misrepresentations. Respondent also maintains that it would not be reasonable to rely on statements of "low-level employees" citing Matter of *Cahill (Rowan Group Inc.-Commissioner of Labor)* (79 AD3d 1514 [3d Dept 2010]), among other cases. Respondent further notes that requests for reconsideration do not toll the statute of limitations, citing *Matter of Hurwitz v New York City Hous. Auth.* (92 AD3d 884, 885 [1st Dept 2012] ["requests for extension and/or reinstatement of [a Section 8] voucher. . . did not serve to toll or otherwise extend the four-month statute of limitations"]).

Discussion

Federal law prohibits respondent from making any payment to a landlord for a HQS violation which was not certified as repaired (*see* 24 CFR § 982.404 (a) (3) ["[t]he PHA must not make any housing assistance payments for a dwelling unit that fails to meet

the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction])."

CPLR article 78 proceedings against a public "body or officer must be commenced within four months after the determination to be reviewed becomes final and binding" (CPLR 217 [1]). An agency determination is final when the petitioner is aggrieved by the determination (*see Matter of Biondo v New York State Bd. of Parole*, 60 NY2d 832, 834 [1983]). A petitioner is aggrieved once the agency has issued an unambiguously final decision that puts the petitioner on notice that all administrative appeals have been exhausted; any ambiguity created by the agency as to whether the decision is final and binding is resolved against the agency (*see Matter of Carter v State of N.Y., Exec. Dept., Div. of Parole*, 95 NY2d 267 [2000]).

Petitioner failed to establish that an extraordinary situation existed which would permit the court to deviate from the general rule that estoppel cannot be applied against an agency. Even if petitioner had demonstrated sufficient foundation for the call logs, the logs only reflect that two calls were made prior to the expiration of the statute of limitations. These entries only reflect that the inspector was not given access and the inspection was rescheduled. The entries do not reflect any statement that petitioner was told to wait (nor do later entries reflect such a statement).

Keypour's affidavit is vague and lacks sufficient detail. Keypour never states that he was told to "wait" nor the date(s) when he (or his office) was so told. Moreover, petitioner has not established that it would be reasonable for a large landlord to delay filing an article 78 after receipt of NE-1 notices. It appears that petitioner's unstated argument is that the agency did not alert petitioner to the need to file an article 78 when petitioner and respondent discussed new inspection dates.

Further, petitioner has not established that it faxed respondent a certification, signed by both the landlord and the tenant, attesting to the completion of the repairs, which is basis to restore a subsidy terminated for non-compliance with HQS. Not only does petitioner fail to establish that the fax was sent to respondent, as opposed to some other person or entity, petitioner fails to demonstrate what was faxed.

At some point before the expiration of the statute of limitations and after receipt of the NE-1 notices, petitioner knew or should have known that the November subsidy payments for amounts different than the previous month. Thus, petitioner either knew or should have known that it was aggrieved at some point before the expiration of the statute of limitations in February, 2011 (*see Matter of Baloy v Kelly*, 92 AD3d 521 [1st Dept 2012] [letter denying application for gun license was final and binding for the purposes of the four month statute of limitations

because petitioner knew or should have known that he was aggrieved by it]). Petitioner has not established that federal requirements can be ignored because of its own lackadaisical attempts to rectify termination of the subsidies.

Accordingly, it is

ORDERED that cross motion to dismiss the petition as time barred is granted, without costs and disbursements; and it is further

ADJUDGED that the petition is denied as untimely and the proceeding is dismissed.

This Constitutes the Decision, Order and Judgment of the Court.

Dated: August 28, 2013

ENTER:

J.S.C.

HON. PETER H. MOULTON
SUPREME COURT JUSTICE