

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

TARINA HAMMOND)

Appellant,)

-vs-)

CLEVELAND METROPOLITAN
HOUSING AUTHORITY)

Appellee.)

CASE NO. 616036

JUDGE CAROLYN B. FRIEDLAND

ORDER AND DECISION

I. Introduction

This matter came before the Court on an administrative appeal filed by appellant Tarina Hammond ("Ms. Hammond") pursuant to R.C. 2506.01. Ms. Hammond is appealing the decision of the Cleveland Metropolitan Housing Authority ("CMHA")¹ that terminated her participation in CMHA's Housing Choice Voucher Program ("HCVP"). As no transcript existed of the administrative hearing, the Court held an evidentiary hearing on May 15, 2008 pursuant to R.C. 2506.03(A)(5). Attorney Carol Kile appeared on behalf of Ms. Hammond, and attorney Mike McGuire appeared on behalf of CMHA. For the following reasons, CMHA's decision is **REVERSED**.

II. Facts

After an administrative hearing held on January 9, 2007, CMHA terminated Ms. Hammond's participation in the HCVP, effective February 28, 2007² for violation of 24 C.F.R. 982.982.551(h)(2) (unauthorized occupant) and 24 C.F.R. 982.551(b)(7)(k) (fraud, other program violation). According to CMHA's decision, communicated to Ms. Hammond by letter dated January 23, 2007, "[t]he composition of the assisted family residing in the unit must be

¹ Hammond has identified the appellee as the "Cleveland Metropolitan Housing Authority." The correct name of the appellee is the "Cuyahoga Metropolitan Housing Authority."

approved by the PHA . . . [t]he family must request PHA approval to add any other family member as an occupant." CMHA's decision also stated "members of the family must not commit fraud, bribery, or any other corrupt or criminal act in connection with the programs."

CMHA found Ms. Hammond's termination from the program appropriate based on the fact that Hammond's ex husband, Vidal Hammond was an unregistered occupant of the unit, and because Ms. Hammond entered into a side agreement with the unit's landlord concerning the unit's monthly rent. In accordance, with R.C. 2506.01, Ms. Hammond now appeals to this Court the decision of CMHA to terminate her participation in the HCVP.

A full evidentiary hearing was held before the Court on May 15, 2008. All parties were present and represented by counsel. CMHA called Paulette Childs, Compliance Officer for CMHA as a witness. Ms. Childs testified concerning her job duties at CMHA and provided an overview of the HVCP program. Ms. Childs testified that Ms. Hammond was proposed for program termination after CMHA was notified of an unauthorized occupant at the unit and unreported income. After receiving notice of these violations, Ms. Childs testified that she sent Ms. Hammond an appointment letter, which directs the client to bring witnesses, legal representation, and any type of documentation or advocates to the hearing. The hearing was held on January 9, 2007.

Ms. Childs testified that she based on her decision to terminate Ms. Hammond's participation in the HCVP program based on the following evidence. First, Ms. Childs stated that there was eyewitness testimony and documentary evidence that Ms. Hammond's ex husband Vidal Hammond lived at the unit. CMHA offered into evidence Exhibit 2 which is copies of mailings addressed to the attention of Vidal Hammond, and sent to unit's address.

² On 2/28/2007, the Court granted Hammond's Motion for Stay of Administrative Decision Pending Appeal.

Second, Ms. Childs testified that Ms. Hammond's former landlord, Michele Jackson provided copies of receipts indicating a rental payment side agreement between Ms. Hammond and Ms. Jackson. See Exhibit 1. Exhibit 1 is a copy of receipts for payments made for a security deposit, October, November, and December 2005 rent.

Ms. Hammond testified on her own behalf, and testified that Vidal Hammond did not live at the unit. She did testify that Vidal Hammond would occasionally visit the unit to spend time with the children, but he never would spend the night at the unit. Ms. Hammond also testified that other men—her uncles, brothers, and boyfriend would also visit her at the unit, but none of them would spend the night at the unit. Ms. Hammond also explained that her brother would wash his laundry every weekend. Ms. Hammond also testified that she did not enter into any side agreement concerning the unit's rent with Ms. Jackson.

Barbara Cook also testified on behalf of Ms. Hammond. Ms. Cook is Ms. Hammond's mother, and she testified that to her knowledge, Vidal Hammond never lived at the unit, and that her daughter never entered into a rental side agreement with Ms. Jackson.

III. Law and Argument

In a proceeding under R.C. 2506, the Court must weigh the evidence and determine whether there exists a preponderance of reliable, probative and substantial evidence to support CMHA's decision concerning the termination of Ms. Hammond's participation in the HCVP. However, the Court may not blatantly substitute its judgment for that of the administrative agency, especially in the areas of administrative expertise. *Dudukovich v. Housing Authority* (1979), 58 Ohio St.2d 202. If, at the agency level, a preponderance of reliable, probative and substantial evidence exists, the Court must affirm the agency's decision. *Budd Co. v. Mercer* (1984), 14 Ohio App.3d 269.

Ms. Hammond complains that CMHA's decision to terminate her from further participation the HCVP was unreasonable, unsupported by a preponderance of the substantial, reliable evidence, and constitutes an abuse of discretion.

Under R.C. 2306.04, the Court may find that the order, adjudication, or decision of the administrative body is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record. Consistent with its findings, the Court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication or decision consistent with the findings or opinion of the court. Based on the evidence presented, the Court finds that CMHA's decision was unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.

As to the issue of an unauthorized occupant, CMHA offered into evidence Exhibit 2 which is copies of mailings addressed to the attention of Vidal Hammond, and sent to unit's address. A review of Exhibit 2 does not indicate one way or the other that Vidal Hammond was an unauthorized occupant living at the unit. The mailings consist of junk mail addressed to Vidal Hammond, and not important mail such as utility statements, bank statements, or credit card statements. In fact, it is conceivable that Vidal Hammond could have supplied the unit's address as his mailing address. Ms. Hammond offered into evidence Exhibit A, another mailing addressed to Vidal Hammond, and sent to 13317 Woodworth Road, Cleveland, Ohio 44112-1911. This is important because Ms. Hammond testified that the residence at 13317 Woodworth is her current home, that she is currently divorced from Vidal Hammond, and that she is not currently living with him.

Furthermore, Ms. Hammond testified that Vidal Hammond would be at the unit spending time with his kids. Ms. Hammond also testified that other men—uncles, brothers, and her boyfriend would spend time at the unit. There was also testimony that Ms. Hammond's brother would wash his clothes at the unit during the weekends. This direct testimony, coupled with the fact that Exhibit 2 does not demonstrate that Vidal Hammond lived at the unit, supports the finding that CMHA's decision was unreasonable and unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.

As to side rental payment agreement, CMHA offered into evidence Exhibit 1, which are copies receipts for payments made for a security deposit, October, November, and December 2005 rent. The receipts contain the purported signature of the landlord Ms. Jackson, but the receipts lack any identifying feature showing that Ms. Hammond was responsible for making these side payments. Furthermore, there is evidence in the form of testimony from Ms. Childs that there was hostility between the landlord Ms. Jackson, Ms. Cook, and Ms. Hammond. Further, the genesis of this case was an eviction proceeding between Ms. Hammond as tenant, and Ms. Jackson as landlord. Ms. Jackson did not attend or testify at the evidentiary hearing before the Court on May 15, 2008. Ms. Jackson did not give sworn testimony at the agency-level hearing, nor is there a transcript of her unsworn testimony. Ms. Childs relied on Ms Jackson's testimony and the receipts in reaching her decision to terminate Ms. Hammond from the HCVP. This evidence supports a finding that CMHA's decision was unreasonable and unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.

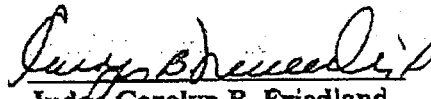
IV. Conclusion

Based on the evidence presented to this Court, the Court finds that CMHA's decision terminating Ms. Hammond from further participation in the HCVP was unreasonable and unsupported by the preponderance of substantial, reliable and probative evidence on the whole record. Accordingly, CMHA's decision terminated Ms. Hammond is **REVERSED** and CMHA is ordered to reinstate Ms. Hammond in the HCVP provided that Ms. Hammond currently meets the qualifications for assistance pursuant to the applicable rules and regulations. Costs to appellee, CMHA.

IT IS SO ORDERED

Date

6-24-08


Judge Carolyn B. Friedland

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GERALD E. FUERST, CLERK
By  Deputy