

NO. A07-2103

State of Minnesota
In Court of Appeals

Barbara Wilhite,

Relator,

vs.

Scott County Housing and Redevelopment Authority,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

1. Respondent does not object to the first legal issue identified by Relator¹ for consideration by the Court in this appeal.

Apposite Authority:

24 C.F.R. § 982.552(b)(2)

Cole v. Metropolitan Council HRA, 686 N.W.2d 334, 337 (Minn. Ct. App. 2004)

2. Respondent objects to the second and third legal issues identified by Relator for consideration by the Court in this appeal on the grounds that they were not presented before the Hearing Officer for consideration or identified in Relator's Statement of the Case for review.

Apposite Authority:

24 C.F.R. 982.555(c)(2)

Gibbs v. Metropolitan Housing and Redevelopment Authority, 2007 WL 4563920 (Minn. Ct. App. Dec. 31, 2007)

¹ Pursuant to the Notice of Case Filing issued by the Office of the Clerk of Appellate Courts on November 6, 2007, Barbara Wilhite shall be referred to as the "Relator" herein.

STATEMENT OF THE CASE

Respondent Scott County Housing and Redevelopment Authority² (“the HRA”) has no objection to Relator Barbara Wilhite’s Statement of the Case except to clarify that Hearing Officer Kathy Kline presided over Relator’s informal hearing on August 24, 2007, rather than August 21, 2007 as identified in her Brief.

STATEMENT OF THE FACTS

Except as otherwise clarified or substantiated herein, the HRA does not object to the Statement of the Facts outlined in Relator’s Brief to the Court.

STANDARD OF REVIEW

Certiorari review is deferential and limited in scope. As recognized by the Supreme Court in *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (1981):

[C]ertiorari lies to review the quasi-judicial acts and proceedings of a municipal body to determine -- through an inspection of the record -- if the body had jurisdiction, kept within it, and to examine the evidence, not for the purpose of weighing it, but to ascertain whether it furnished any legal and substantial basis for the action taken.

313 N.W.2d at 414, *quoting*, *Beck v. City Council of St. Paul*, 50 N.W.2d 81, 82 (1951). In other words, “[a]n agency’s quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency’s jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Carter v. Olmsted County Hous. and Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn.

² During the course of this proceeding, Scott County Housing and Redevelopment Authority changed its name to the Scott County Community Development Agency. For purposes of this appeal, Respondent will continue to be referred to as the Scott County Housing and Redevelopment Authority or the “HRA”.

Ct. App. 1998), *citing, Hiawatha Aviation v. Minnesota Dep't of Health*, 375 N.W.2d 496, 501 (Minn. Ct. App. 1985), *aff'd*, 389 N.W.2d 507 (Minn. 1986).

Relator contends that there is not substantial evidence in the record to support the Hearing Officer's determination that Ms. Wilhite was evicted from her housing for a serious lease violation. Minnesota courts have defined "substantial evidence" as "such relevant evidences as a reasonable mind might accept as adequate to support a conclusion." *Carter*, 574 N.W.2d at p. 730 (Minn. Ct. App. 1998), *citing, Soo Line R. Co. v. Minnesota Dep't of Transp.*, 304 N.W.2d 305-306 (Minn. 1981). "Substantial evidence means more than a scintilla of evidence, 'some' evidence, or 'any' evidence." *Carter*, 574 N.W.2d at p. 730 (Minn. App. 1998), *citing, Hiawatha Aviation v. Minnesota Dep't of Health*, 375 N.W.2d 496, 501 (Minn. Ct. App. 1985). In addition, "[c]onsiderable deference is given to administrative fact-finding, and the burden to prove that a decision is unsupported by substantial evidence is on the relator." *Hicks v. Dakota County Community Development Agency*, 2007 WL 2416872 (Minn. Ct. App. 2007).³ (RA-1) On appeal, Ms. Wilhite bears the burden of establishing that the Hearing Officer's decision is not supported by the record when considered in its entirety based on an "abuse of discretion" standard of review. *Carter*, 574 N.W.2d at p. 730 (Minn. Ct. App. 1998), *citing, State ex rel. I.S.D. No. 276 v. Dep't of Education*, 256 N.W.2d 619, 627 (Minn. 1977).

Relator also contends that the notice to terminate her Section 8 voucher was procedurally and constitutionally deficient and she was wrongfully denied the opportunity to cross examine witnesses. The HRA objects the Court's review of these issues since they

were not considered by the Hearing Officer at the informal hearing or identified by Relator in the Statement of the Case provided to this Court. Notwithstanding the foregoing objection and without waiving it, “[w]hether an administrative agency has provided sufficient notice in accordance with the requirements of procedural due-process is a legal issue, which [the appellate court] reviews de novo.” *Gibbs v. Metropolitan Housing and Redevelopment Authority*, 2007 WL 4563920 at p. 3 (Minn. Ct. App. Dec. 31, 2007) (RA-5), citing, *In re License of West Side Pawn*, 587 N.W.2d 521, 522 (Minn. Ct. App. 1998), review denied, (Minn. March 30, 1999).

ARGUMENT

Relator Barbara Wilhite is asking this Court to overturn the findings of Hearing Officer Kathy Kline dated September 3, 2007, which upheld the HRA’s decision to terminate Ms. Wilhite’s Section 8 housing assistance based on her eviction for a serious lease violation. Relator mistakenly contends that the termination of her voucher was based on evidence of alleged lease violations which ultimately led to the non-renewal of her lease by her landlord, Evergreen Heights Townhomes (“Landlord”). In actuality, Ms. Wilhite’s voucher was terminated due to her failure to vacate the premises in violation of the express terms of her lease resulting in a court-ordered eviction on or about July 24, 2007. Ms. Wilhite had adequate notice of the grounds for the termination of her Section 8 voucher and cannot deny the undisputed fact that she was evicted from the leased premises for failing to vacate the property as required under the lease. The HRA respectfully requests that the

³ Pursuant to Minn. Stat. § 480A.08, Subd. 3, copies of unpublished appellate decisions cited herein are included in the attached appendix. References to Respondent’s Appendix shall be cited as “RA-_____”.

findings and conclusions of Hearing Officer Kathy Kline upholding the termination of Relator's Section 8 voucher by the HRA be affirmed in their entirety.

- A. There is substantial evidence in the record to support the Hearing Officer's decision that the HRA had the legal authority to terminate Barbara Wilhite's Section 8 housing assistance based on her eviction for failing to vacate the leased premises pursuant to the terms of the lease.**

Regulations promulgated by the United States Department of Housing and Urban Development ("HUD") for the administration of the Section 8 Housing Voucher program provide the legal backdrop for the HRA's action in this proceeding. *See*, 24 C.F.R. Chapter 982. Such regulations clearly and unambiguously outline the obligations for both the HRA and Ms. Wilhite under the Section 8 voucher program. The regulations specifically mandate that the HRA "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." 24 C.F.R. § 982.552(b)(2) (A-63). The foregoing obligations are reiterated in HUD's Housing Choice Voucher Program Guidebook and the HRA's Administrative Plan for the Section 8 Housing Choice Voucher.

Ms. Wilhite does not dispute the material facts that support the termination of her Section 8 housing assistance under federal law. In a letter dated April 16, 2007, Evergreen Heights Townhomes advised Ms. Wilhite that her lease would not be renewed "due to several lease violations including numerous late rent payments and three Unlawful Detainer actions filed [against her] in 2005-2006."⁴ (A-38) Representatives of the HRA reminded Ms. Wilhite many times, both verbally and in writing, that her voucher would be terminated

⁴ Various documents which evidence Relator's alleged lease violations were submitted to the Hearing Officer to substantiate the landlord's grounds for not renewing Ms. Wilhite's lease. (See, A-39 thru A-48).

if she were evicted from the unit for a serious lease violation. (A-9) Section 29 of Relator's lease with Evergreen Heights Townhomes specifically provided as follows:

At the termination of this Lease, Tenant shall give immediate possession to Landlord, and deliver all keys to Landlord. (A-56)

Relator undeniably violated the foregoing provision of the lease by refusing to vacate the leased premises as instructed by the Landlord upon the expiration of the lease on June 30, 2007.

As a result of Ms. Wilhite's actions, Evergreen Heights Townhomes was forced to commence an unlawful detainer action in Dakota County District Court on or about July 10, 2007. The complaint sought repossession of the property based on Relator's failure to vacate the premises when provided written notice to do so and for violating the terms of the rental agreement by failing to vacate at the end of the lease term. (A-23) Ms. Wilhite continued to remain in wrongful possession of the leased premises up through the initial hearing date on July 24, 2007, at which time she admitted the allegations in the Landlord's complaint for eviction and the district court ordered the court administrator to enter judgment in favor of the landlord for recovery of the property. (See, Findings of Fact, Conclusions of Law, Order and Judgment, A-24 to A-27) Ms. Wilhite's court-ordered eviction for failing to vacate the premises in violation of express terms of her lease constitutes sufficient evidence to terminate her Section 8 assistance under 24 C.F.R. § 982.552(b)(2).

In *Cole v. Metropolitan Council HRA*, 686 N.W.2d 334, 337 (Minn. Ct. App. 2004) the appellate court held that a default judgment in an eviction case could be deemed sufficient proof of a serious violation of the terms of the lease for purposes of terminating a

participants Section 8 housing assistance. *Cole v. Metropolitan Council HRA*, 686 N.W.2d at p. 337. Since Ms. Wilhite admitted the allegations in the Landlord's complaint for eviction in this case, there should be no question concerning the sufficiency of the evidence supporting the eviction and consequently the grounds for the HRA's termination of Relator's housing assistance. The only issue for this court to determine is whether Relator was evicted for a serious lease violation, or more specifically, whether her failure to vacate the premises at the end the lease term constitutes a serious lease violation that would mandate the termination of her Section 8 housing assistance under 24 C.F.R. § 982.552(b)(2). (A-63)

Although the Federal regulations do not define what constitutes a "serious lease violation" for purposes of § 982.552(b)(2), the HRA contends that retaining occupancy of leased premises beyond the expressed term of the lease is a quintessential violation of said lease. Although generally characterized as a "holdover tenant", such conduct also constitutes a violation of the term provisions of the lease agreement thereby justifying repossession of the property to the landlord in an eviction proceeding. In this case in particular, the return of possession of the premises after the expiration of the lease was an expressed provision of the lease that was admittedly and blatantly violated by Ms. Wilhite. Although the parties can argue about semantics, there can be no dispute that Ms. Wilhite's conduct constituted a serious violation of the lease for which an eviction order was ultimately issued. Based on the expressed and unambiguous provisions of 24 C.F.R. § 982.552(b)(2), Ms. Wilhite's voucher was properly terminated by the HRA and appropriately affirmed by the Hearing Officer.

A holding that Barbara Wilhite was not evicted for a “serious lease violation” would be inconsistent with plain language of her lease, the Landlord eviction complaint, the subsequent court ordered eviction and the unambiguous provisions of 24 C.F.R. § 982.552(b)(2). More importantly, such a holding could adversely impact the ongoing operation of the entire Section 8 housing assistance program. The clear intent of 24 C.F.R. § 982.552(b)(2) is to prohibit ongoing assistance to participants who have been judicially determined to have violated material provisions of their lease with their private landlord. The Section 8 voucher program is dependent on private landlords who are willing to rent their units to low income residents. Strict enforcement of the applicable Federal regulations is necessary to convince wary landlords to participate in the program. Section 8 tenants that blatantly refuse to vacate their rental units pursuant to the express terms of their lease must be deemed to be in violation of the lease. To the extent such violation forces the landlord obtain a court-ordered eviction of the tenant, 24 C.F.R. § 982.552(b)(2) mandates that the tenant be terminated from the Section 8 voucher program.

In order to effectuate the intent of 24 C.F.R. § 982.552(b)(2) as well as maintain the integrity of the Section 8 program, the HRA respectfully requests that the Hearing Officer’s decision upholding the termination of Relator’s housing assistance by the HRA be affirmed in its entirety.

B. The notice to terminate Relator’s Section 8 housing assistance was neither procedurally nor constitutionally deficient to justify overruling the Hearing Officer’s decision.

Established principles of due process require that a recipient of federal assistance be provided timely and adequate notice of the reasons for a proposed termination of benefits

and an effective opportunity to defend. *Goldberg v. Kelly*, 397 U.S. 254, 264, 90 S.Ct. 1011, 1018 (1970). Such principles have been held applicable to administrative hearings involving the termination of Section 8 housing assistance. *Carter*, 574 N.W.2d at p. 731. Relator contends that the HRA's notice to terminate her Section 8 housing assistance was procedurally and constitutionally deficient. In particular, she claims that the notice of termination did not adequately notify her of the basis for her termination of assistance or provide her an adequate opportunity to defend herself at the informal hearing. These arguments are inconsistent with the plain wording of the notice of termination provided by the HRA, the applicable legal standard for determining the sufficiency of the notice as well as Relator's own submissions to this Court. Ms. Wilhite was adequately advised that her assistance was being terminated due to her court ordered eviction from the leased premises and she admittedly attended the informal hearing to challenge the HRA's decision to terminate her assistance on such grounds. The Hearing Officer's decision should not be overturned based on either the procedural or constitutional deficiencies identified by the Relator.

Again, HUD regulations govern the notice that the HRA is required to send in connection with the termination of Section 8 housing assistance. Pursuant to 24 C.F.R. 982.555(c)(2), the notice must (i) contain a brief statement of the reasons for the decision to terminate; (ii) state that the recipient may request an informal hearing if he/she does not agree with the decision; and (iii) identify a deadline for requesting the informal hearing. From a constitutional perspective, the notice "must communicate the interest at stake to be constitutionally sufficient." *Gibbs v. Metropolitan Housing and Redevelopment Authority*,

2007 WL 4563920 at p. 4 (Minn. Ct. App. Dec. 31, 2007) (RA-5). “If a party knows or has reason to know of the adverse consequences of government action, then the notice meets the requirements of procedural due process.” *Id.* Like the voucher holder in *Gibbs*, Relator was provided adequate notice that her housing assistance was being terminated by the HRA due to her eviction, thereby satisfying both the statutory and constitutional notice requirements mandated by the law.

Relator clearly understood the implications of being evicted for a serious lease violation. She had been warned of the adverse implications of an eviction during her certification process. (A-9) She had also been reminded by HRA representatives on multiple occasions of the possibility of losing her housing assistance when previously served with eviction complaints by her Landlord. (A-9 and A-20) Ms. Wilhite was subsequently evicted for failing to vacate the unit in violation of the express provisions of her lease. The HRA notified Relator of the termination of her Section 8 assistance and specifically referenced the eviction and relevant Federal regulations as the basis for the HRA’s actions. Based on the HRA’s notice of termination (A-29) and subsequent confirmation letter (A-34), Relator admittedly attended the informal hearing with her attorney fully prepared to argue that she had not been evicted for a serious lease violation. (Petitioner’s Brief, p. 13)⁵ Hearing Officer Kline specifically concluded, however, “that Ms. Wilhite was duly informed of the consequences of her actions and chose nonetheless not to vacate her rental unit **in violation of her lease.**” (A-71) (emphasis added) Based on

⁵ Representatives of the HRA acknowledged at the informal hearing that Ms. Wilhite’s Section 8 assistance would not have been terminated if she had vacated her unit at the expiration of the lease term. (A-10) Therefore, the termination of her assistance was clearly based on her failure to return possession of the unit as required by the terms of the Lease and the resulting court-ordered eviction.

the foregoing, Relator's challenges to the sufficiency of the termination notice are unfounded and should not preclude this Court from affirming the findings and conclusions of the Hearing Officer herein.

C. Relator was not denied her constitutional right to confront and cross examine witnesses at the informal hearing held before Hearing Officer Kathy Kline on August 24, 2007.

Relator's final challenge to the Hearing Officer's decision relates to her purported constitutional right to confront and cross examine witnesses. In particular, Relator claims she was denied the opportunity to question individuals at the informal hearing who possess first hand knowledge of her alleged lease violations which eventually resulted in her eviction. (Petitioner's Brief, p. 15).

Relator's reliance on this purported constitutional deficiency, however, is misplaced. Pursuant to the applicable Federal regulations, Relator is only entitled to question the witnesses that are actually present at the informal hearing. 24 C.F.R. § 982.555(e)(5). In addition, in this case, the HRA was able to establish the lease violation and resulting eviction without the necessity of calling any witnesses. Finally, the basis for Relator's eviction is undisputed and the underlying facts supporting the eviction were admitted by Relator at her initial court appearance on July 24, 2007. (A-24) Based on the foregoing, Relator has not established a violation of her constitutional right that would justify overturning the decision of the Hearing Officer or the termination of her housing assistance by the HRA.

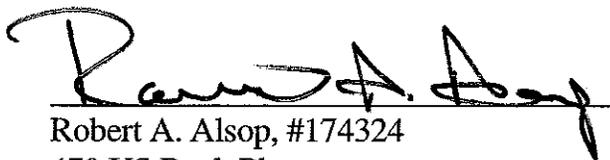
CONCLUSION

Respondent Scott County Housing and Redevelopment Authority respectfully requests that the Hearing Officer's decision affirming the HRA's termination of Relator Barbara Wilhite's housing assistance be upheld in its entirety.

Respectfully submitted,

Dated: March 26, 2008

KENNEDY & GRAVEN, CHARTERED

A handwritten signature in black ink, appearing to read "Robert A. Alsop", written over a horizontal line.

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