

CIVIL COURT of the CITY of NEW YORK
NEW YORK COUNTY
HOUSING COURT: PART N

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LENOXVILLE ASSOCIATES,
Petitioner,

L & T Index No. 51106/11

-against-

AUDREY HASSELL,
Respondent.

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Hon. Brenda S. Spears, J., H.C.:

In this non-payment proceeding, the petitioner has alleged that the respondent has failed to pay the rent required pursuant to her Department of Housing & Urban Development ("HUD") "Section 8" lease. The respondent answered *pro se* and alleged that the rent had been paid.

The respondent successfully retained counsel. This matter was adjourned for trial and subsequently transferred to the instant Part.

At trial, the petitioner's managing agent and site manager testified that the subject premises is a HUD subsidized development where the tenants' rents are determined based upon the annual income of the eligible household members. Under the program, and as set forth in the Model Lease, each tenant is required to annually report household income and family composition for purposed of determining the appropriate monthly rent and any applicable rental assistance that should be available to the household. The lease further states that the petitioner is to verify the information provided by the tenant and use the verified information to determine the appropriate rent.

The witness further testified that in the instant case, the respondent reported her wages. However, when the petitioner sought to verify the information provided by the respondent for 2010, a discrepancy was discovered. Specifically, the petitioner determined that the respondent had failed to report receiving \$60,580.01 in retroactive pay; this was the amount reflected on the respondent's federal "W2" form. The petitioner re-calculated the

respondent's rent, including this income. This re-calculation resulted in a monthly rent in the amount of \$1534, commencing in January 2011. Using the recalculated monthly rental amount, and giving the respondent credit for all payments received, the petitioner claimed that the respondent owes \$19,545 in rent through July 31, 2011.

The respondent disputed the petitioner's contention. She testified that she was employed by the New York City Human Resources Administration ("HRA") as a fraud investigator. She claimed that for some period of time she had been she had been performing work that was at a different title. She submitted a grievance to HRA. She was ultimately successful in her grievance and received a lump sum payment from H.A. This amount represented the salary she should have received for the work she actually performed. However, the respondent contended that the lump sum payment was not income because it was one-time payment.

An HRA Deputy Director in the Salary Administration Unit testified concerning the agency's labor relations grievance procedures. He explained that employee grievances concern time and leave issues, as well as allegations that an employee was performing "out of title" work, or work that was not in the scope of the employee's official duties.

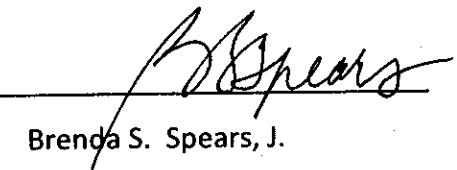
The witness stated that in the instant case, the respondent successfully demonstrated that she had been performing "out of title" work. As a result, she was entitled to be paid at the salary level for the job she actually performed. The amount of the compensation she received was determined by calculating the difference between the salary she received and the salary she should have received for the work she actually performed. She received a one-time lump sum payment in the amount of the \$60,580.01.

Upon review of the testimony heard in this case, the court finds that the lump sum payment received by the respondent and reported as income on her "W2" form, was indeed income. It represented a retroactive payment for employment that she should have received for work she performed. This sum should have been reported to the petitioner as income, since it was derived from the result of the respondent's employment.

Thus, based on the evidence presented, the petitioner is awarded a final judgment of

possession and a possessory money judgment in the amount of \$19,545, representing rent due through July 31, 2011. Issuance of the warrant is stayed 5 days.

This constitutes the decision and order of this court.


Brenda S. Spears, J.

HON. BRENDA SPEARS

Dated: New York, New York

July 13, 2012

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