

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 26

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX:

Case Disposed   
 Settle Order   
 Schedule Appearance

-----X  
**BARON, JEROME**

Index No. 0002613/2006

-against-

Hon. NELSON ROMAN

**STATE DIVISION**  
 -----X

Justice.

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, **MISCELLANEOUS**  
 Noticed on **January 19 2007** and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers *this the petition is resolved*  
*in accordance with the annexed*  
*decrees/order dated 4/25/07*

RECEIVED  
 MAY 10 2007  
 GENERAL-COUNSEL'S OFFICE

Dated: \_\_\_\_\_  
 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

*(Signature) 4/25/07*

Hon. \_\_\_\_\_  
**NELSON ROMAN, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF THE BRONX, PART 26

-----X

JEROME BARON,  
 Plaintiff/Petitioner,

Index No. 2613/06

Hon. NELSON ROMAN,

- against -

N.Y.S. DIVISION OF HUMAN RIGHTS,  
 Defendant/Respondent,

-----X

The following papers numbered 1 to \_\_\_ read on this motion, \_\_\_\_\_, noticed on \_\_\_\_\_, and duly submitted as no. \_\_\_ on the Motion Calendar of \_\_\_\_\_.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits		
Cross-Motion and Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memorandum of Law		

Petitioner, Jerome Baron, commenced the instant Art. 78 proceeding seeking to overturn the respondent's, N.Y.S. Division of Human Rights (Human Rights), determination dated June 22, 2006. Or, in the alternative seeking a court order that the determination was arbitrary or capricious. In opposition, respondent asserts that the petition must be dismissed as time barred. For the following reasons, the respondents' application is granted.

A review of the moving papers, inclusive of the June 22, 2006 determination, reveals that on or about December 16, 1994, petitioner filed an application with the New York City Housing Authority (NYCHA) seeking a "Section 8" housing subsidy. In response to said application, petitioner was informed by NYCHA that it had "closed the Section 8 waiting List on December 16, 1994, for all new applications except for Victims of Domestic Violence, Homelessness and Intimidated Witnesses." See, Undated Letter from NYCHA. Petitioner was further informed upon review of his application that he did not fall within any of the enumerated exception and thus his application was rejected. Id.

In response to an application submitted by petitioner on or about October 7, 2004, NYCHA informed petitioner that based upon the information he provided, he was eligible for "Priority 2" status as it pertained to his request for Section 8 subsidy. See, Letter dated December 27, 2004. According to NYCHA guidelines, Priority 2 is reserved for applicants of Section 8 who live in hotels or shelters used by the City or whose primary nighttime residence is a place not designed for, or ordinarily used as, a regular sleeping

accommodation. By letter dated November 1, 2005, NYCHA informed petitioner that his application for Section 8 was received on October 7, 2004 and was still pending. More specifically, NYCHA informed that his application remained active, the agency lacked sufficient federal funding under Section 8 to pay rental subsidies for additional participants, and that it could not give a firm date as to when petitioner would be notified for an interview. On or about November 7, 2005, petitioner's status as it pertained to his application for Section 8 subsidy was downgrade on the basis that he "moved out of the shelter system." See, NYCHA letter dated November 14, 2005. Following NYCHA notification to petitioner that his eligibility status was downgraded, petitioner filed a complaint with Human Rights wherein he asserted, *inter alia*, that he was unlawfully discriminated against because of a disability and that the determination of the NYCHA should be overturned. Upon completion of an investigation, Human Rights issued its determination wherein it found that "there is NO PROBABLE CAUSE to believe that respondent [ NYCHA] has engaged in or is engaging in the unlawful discriminatory practice as complained of." Thus, dismissing petitioner's complaint. Following receipt of said determination, petitioner now seeks to overturn such determination.

In support of its application , petitioner asserts that at the time of his application for Section 8 benefits he was in-fact homeless and thus subject to one of the enumerated exceptions to policy. In addition, petitioner attaches unverified or notarized letters from the Coalition for the Homeless, dated September 27, 2006, the Bronx Defenders, dated October 25, 2006, the Jewish Board of Family and Children Services, Inc., dated May 28, 2004 and August 12, 2005, and the Montefiore Medical Group, dated December 7, 2005, September 1, 2005 and April 19, 2006. Though these documents are of no evidentiary value, they appear to indicate that petitioner was homeless at various times, including as of October 2005. In addition the letters indicate that prior to August 12, 2005, petitioner resided in an apartment. Lastly, they indicate that petitioner was incarcerated for a period of approximately fifteen (15) years (the specific dated are not indicated) and that he was incapable of living in the shelter system due to his mental illness. Though he asserts that the Human Rights determination was arbitrary or capricious, he fails to indicate in what manner. Lastly, petitioner asserts that he should be granted Priority 2 status, as it relates to his Section 8 application dating back to December 16, 1994. In opposition, respondent asserts that its determination was neither arbitrary nor capricious, and that the petition should be denied as time bared.

Executive Law § 298 provides in relevant part that any complainant, respondent or other person aggrieved by an order, after a public hearing, of the State Commission of Human Rights may obtain judicial review thereof provided such proceeding for review is instituted within sixty days after the service of such order. Under CPLR 304, an action is commenced by filing a summons and complaint or summons with notice, and a special proceeding is commenced by filing a notice of petition or order to show cause and a petition, in the county in which the action or special proceeding is brought. The "Determination and Order After Investigation" herein was served upon petitioner on June 22, 2006. See, Affidavit of Service of Natasha M. Saxton, dated June 22, 2006. A review of the court file and the Request for Judicial Intervention attached to respondent's moving papers reveals that petitioner purchased the index number on December 22, 2006 and filed the notice of petition and petition on December 29, 2006. Thus, petitioner commenced the instant proceeding seeking review of the Human Rights determination approximately 189 days following service of said determination. Accordingly, the petition must be dismissed as time barred.

Though not required to do so, the court determines the Determination and Order After Investigation of respondent Human Rights was neither arbitrary nor capricious. An arbitrary and capricious action is without sound basis in reason and is generally taken without regard to the facts. Pell v. Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 1974, 34 N.Y.2d 222, 231. The question is whether the determination has a "rational basis." Id. at 231. According to

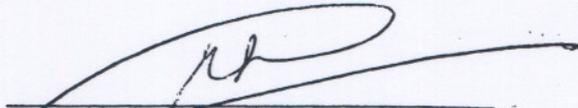
the decision, petitioner alleged NYCHA discriminated against him on the basis of his disability, presumable a mental illness. Petitioner applied for a Section 8 subsidy and was granted Priority 2 Status. NYCHA only accepted applications from applicants who could verify there were victims of domestic violence homeless, intimidated witnesses or special purpose applicants. According to NYCHA policy petitioner was deemed homeless thus entitled to a Priority 2 Status. On or about November 3, 2005, petitioner was interviewed by NYCHA wherein information revealed that petitioner moved out of the shelter system. This information is supported in petitioner's submission to the court. Upon a showing that petitioner left the shelter and no longer homeless as defined by NYCHA policy, petitioner failed to qualify for Section 8 subsidy or priority status. Moreover, according to the hearing courts determination, there was no showing of discrimination on the part of NYCHA. Based on the foregoing, petitioner has failed to demonstrate that the Human Rights determination was either arbitrary or capricious. It is therefore

ORDERED that the Article 78 proceeding commenced under N.Y.S. Supreme Court Bronx County Index No. 2613/06 is deemed dismissed pursuant to the statute of limitations. It is further

ORDERED that respondent serve a copy of this decision/order, with notice of entry, upon all parties via certified mail within 21 days hereof.

This constitutes the court's decision and order.

April 25, 2007  
Bronx, NY

  
Hon. Nelson S. Roman, S.C.J.