



Shad v. Metropolitan Council Housing and Redevelopment Authority

2008 | Cited 0 times | Court of Appeals of Minnesota | April 8, 2008

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

Affirmed.

Crippen, Judge¹

Considered and decided by Peterson, Presiding Judge; Wright, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

Respondent Metropolitan Council Housing and Redevelopment Authority terminated relator Riaz Shad's Section 8 Housing Assistance Payments contracts and notified him of its intent to collect overpayments made on behalf of a tenant who committed fraud. On review, relator contends that the lack of a hearing deprived him of his right to due process of law. Relator also contends that the decision was not based on substantial evidence and was arbitrary and capricious. We affirm.

FACTS

Determining that relator engaged in fraudulent activity with his tenant, Zeena Dawson, respondent terminated Dawson's Section 8 rent assistance for failure to completely and accurately report her household composition. A hearing officer upheld this decision after Dawson disputed it. Respondent's investigation produced evidence of the relationship of relator with Dawson and occasions when relator listed Dawson's address as his own.

Concluding that Dawson's tenancy and relator's accompanying Section 8 contract were violated, respondent attributed one-half of the overpayments since 2004 to Dawson and claimed that relator owed \$11,563.00, the other half. After first advising relator that he could dispute the repayment claim at an informal hearing, respondent notified relator that it would not conduct a hearing because this process was tied to claims under the Minnesota Revenue Recapture Act, and respondent had decided not to file the debt with the recapture program. See Minn. Stat. § 270A.08 (2006) (requiring notice and hearing when collecting debt under Revenue Recapture Act).

Respondent also banned relator from further participation in its Section 8 program and notified relator that it would withhold Section 8 payments on four other payments contracts to be applied to



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the balance of the overpayment claim attributed to relator.

DECISION

We review respondent's termination decision to consider whether relator's substantial rights were prejudiced because the decision was in violation of constitutional provisions, unsupported by substantial evidence in view of the entire record as submitted, or arbitrary and capricious. See Minn. Stat. § 14.69(a), (e), (f) (2006) (providing standard of review for contested cases in which hearing is required); *M.T. Properties, Inc. v. Alexander*, 433 N.W.2d 886, 892-93 (Minn. App. 1988) (applying same standard when no hearing was required); review denied (Minn. Feb. 22, 1989). Relator argues that his substantial rights were prejudiced because respondent's decision violated procedural due process by not granting him a hearing, that its decision was not supported by substantial evidence, and that its decision was arbitrary and capricious.

1.

Relator claims that denial of his request for an informal hearing violates his right of due process as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and article I, section 7, of the Minnesota Constitution. "At a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case." *Contos v. Herbst*, 278 N.W.2d 732, 742 (Minn. 1979). Because relator did not have a property interest in the Section 8 Housing Assistance Payments contract, respondent did not violate relator's right of due process by denying his request for a hearing.²

Federal regulations promulgated by the Department of Housing and Urban Development apply to all participants in the Section 8 program. *Manor v. Gales*, 649 N.W.2d 892, 894 (Minn. App. 2002). An agency's regulations are interpreted according to their plain language. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512, 114 S.Ct. 2381, 2386-87 (1994). And the regulations are clear: "Nothing in this rule is intended to give any owner any right to participate in the program." 24 C.F.R. § 982.306(e) (2006). Because a property owner does not have a right to participate in the Section 8 program, relator had no property interest in his contract. See *Roth v. City of Syracuse*, 96 F. Supp. 2d 171, 177 (N.D.N.Y. 2000) (holding that owner had no property right or interest in continued participation in Section 8 housing program, based on 24 C.F.R. § 982.306(e)). His rights are no different than those arising when a buyer terminates a practice of purchasing goods or services from a particular vendor.

Additionally, the regulations are clear that an informal hearing is not required when a public housing authority determines that it will "exercise or not exercise any right or remedy against the owner under a HAP contract." 24 C.F.R. § 982.555(b)(8) (2006). Under the contract, respondent's rights and remedies included "recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract." And the public authority is not required to hold an



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informal hearing when it terminates a contract with a Section 8 landlord. See *Omni Behavioral Health v. Miller*, 285 F.3d 646, 652-53 (8th Cir. 2002) (holding that state was free to decide whether to enter into a contract or to terminate a contract with a private contractor when the contract was not a protected property interest).

2.

Respondent's fraud decision must be supported by substantial evidence. *Carter v. Olmsted County Hous. & Redev. Auth.*, 574 N.W.2d 725, 730 (Minn. App. 1998). Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* It is more than a scintilla of evidence, some evidence, or any evidence. *Id.* On appeal, relator must demonstrate that respondent's determinations of fact are not supported by the record when considered in its entirety. *Id.*

Relator disputes whether respondent could rely on evidence from Dawson's September 2006 hearing when it made its decision to terminate his Section 8 contract, but relator cites no authority for this argument. Cf. Minn. R. Evid. 401 (stating that relevant evidence is generally admissible). After Dawson's hearing, respondent determined that Dawson failed to report relator as a household member. Respondent defines a household member in its Statement of Responsibilities as "a person who cannot verify a permanent address elsewhere and is in the household for more than 30 days."

The hearing officer identified the following documentation contradicting relator's claim that he had another permanent address and was not in the Dawson household more than 30 days: (1) an Anoka County Property Account Summary indicating that the property Dawson occupied from September 2003 to July 2005 was owned by relator and classified as "residential homestead" from July 2003 to March 2006; (2) police reports indicating that relator's address in June 2005 was the same as Dawson's address; (3) an Anoka County Property Account Summary indicating that the property Dawson occupied from August 2005 to the time of the hearing was owned by relator and was classified as "residential homestead" from May 2005 until June 2006; (4) police reports indicating that relator's address in February 2006 and May 2006 was the same as Dawson's address; and (5) relator's driver's license at the time of the hearing listing the same address as Dawson. The hearing officer also relied on Dawson's statements at her hearing that relator was her Islamic husband and that they had a child together; a police report indicating that her other children referred to relator as their stepfather; and relator's own testimony indicating that he had a pattern of purchasing properties and renting them to Dawson.

The hearing officer concluded that there was insufficient documentation to show that relator did not reside with Dawson and the officer found that relator was unable to provide sufficient documentation of a permanent address elsewhere. After determining that Dawson failed to report relator as a household member, it concluded that relator violated the payments contract. "A unit occupied by its owner or by a person with any interest in the unit" is not eligible for assistance by a



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public housing authority in the Section 8 program. 24 C.F.R. § 982.352(a)(6) (2006).

Although relator, as a witness at Dawson's hearing, presented evidence to support his argument that he did not reside with Dawson, there were periods of time longer than 30 days in which he failed to provide proof of a permanent residence. And although evidence he presented could support the alternative conclusion that he did not reside with Dawson, it is not our prerogative to question an agency's credibility determinations. Cf. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (deferring to city council's credibility determinations). Because relator has not demonstrated that the respondent's assessment of facts is unsupported by the record when considered in its entirety, respondent's termination decision is supported by substantial evidence.

3.

An agency's decision is arbitrary and capricious "if it is an exercise of the agency's will, rather than its judgment, or if the decision is based on whim or is devoid of articulated reasons." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), review denied (Minn. Nov. 13, 2001). Respondent based its decision on relator's breach of the payments contract, which defines breach to include the owner's fraud or violation of any contract obligation. 24 C.F.R. § 982.453(a)(1), (3) (2006). Respondent's rights and remedies for a breach of a Section 8 contract by an owner are also disclosed in the contract and are authorized in governing regulations. See 24 C.F.R. § 982.453(b) (2006).

Relator breached an obligation under the contract by residing in a Section 8-assisted unit. Owners are prohibited from occupying an assisted unit. 24 C.F.R. § 982.352(a)(6). Relator also breached the contract by committing fraud with Dawson.

Because respondent's decision is the product of evidence in the record and not based on a whim, its decision was not arbitrary and capricious.

Affirmed.

1. Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

2. Relator vaguely challenges respondent's intent to offset the overpayments with payments on the other four Section 8 contracts, but he does not identify the issue or cite authorities in the challenge. This issue is not properly raised or argued in the appellate briefs. See *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issues not briefed on appeal are waived). In addition, the topic of overpayments and setoffs has not been litigated, and any determinations that were made have not involved relator as a party; these proceedings have no effect on any future defenses relator might raise in an effort by respondent to recover overpayments or a claim for payments withheld. See *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000) (requiring that, for res judicata to apply, the claim must have involved same parties or their privies and full and fair opportunity to litigate matter).

