SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

INTERIM ORDER

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

Maria Hidalgo et al.

INDEX NO. 453931/2021

MOT. DATE

- v -

MOT. SEQ. NO. 001

New York State Office of Temporary and Disability Assistance

The following papers were read on this motion to/for preliminary injunction, Article 78, etc.

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS DOC No(s). 1-11

Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS DOC No(s). 14-32

Replying Affidavits ECFS DOC No(s).

Petitioners are renters who owe rent to their landlords. Several are currently facing eviction proceedings. Now, petitioners seek an injunction barring respondent, the NYS Office of Temporary and Disability Assistance, from refusing to accept new applications for the State's Covid-19 Emergency Rental Assistance Program ("ERAP"), codified at 2021 N.Y. Laws Ch. 56, part BB, amended by 2021 N.Y. Laws Ch. 417, Part A. Petitioners allege that if the respondent's ERAP portal is not reopened, "potentially hundreds of thousands of tenants will become subject to eviction and homelessness".

The only issue before the court is whether to grant petitioners a preliminary injunction, as the parties have agreed to adjourn the balance of the petition (respondents' response to the petition and class certification) to March 2022.

Oral argument was held on January 4, 2022 on the record, at which time both sides appeared and were heard. This application is urgent, since the moratorium on evictions in New York State is set to expire on January 15, 2022 (Subpart A of Part C of 2021 N.Y. Laws Ch. 417), and upon filing an application for ERAP, petitioners and similarly situated individuals are entitled to a stay of eviction proceedings pending a decision on their application (see Section 8 of ERAP).

Certain facts are not in dispute. Respondent is currently overextended, with a budget shortfall of approximately $850 million due to provisionally approved applicants in addition to other liabilities. Thus, respondent stopped accepting applications for ERAP on November 15, 2021.

It is also not in dispute that New York will be eligible to apply for reallocation of unspent Emergency Rental Assistance funds from the federal government in March 2022. Whether those funds will exceed respondent's current liabilities is anyone's guess. Respondent submits that the court should defer to its guess that funds will be insufficient. The court disagrees.

Dated: January 6, 2022

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☐**GRANTED** ☐ **DENIED** ☒ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐**SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐**FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

A preliminary injunction is a drastic remedy and should not be granted unless petitioners can demonstrate "a clear right" to such relief (*City of New York v. 330 Continental, LLC*, 60 AD3d 226 [1st Dept 2009]). On a motion for preliminary injunctive relief, petitioners must demonstrate a likelihood of success on the merits, irreparable injury absent the granting of the preliminary injunction, and a balancing of the equities in their favor (see *Aetna Ins. Co. v. Capasso*, 75 NY2d 860 [1990]; see also *1234 Broadway LLC v. West Side SRO Law Project*, 86 AD3d 18 [1st Dept 2011]). Here, petitioners have met their burden.

There can be no dispute that petitioners will suffer irreparable injury absent injunctive relief and that the equities weigh in their favor. Respondent strains to argue that the named petitioners may have other avenues of recourse available to them in the form of rental assistance and/or defenses in an eviction proceeding, but to not grant this injunction will close the door on them with respect to ERAP and constitute actual harm. Further, as petitioners' counsel points out, there is no assurance that petitioners will get the same payout under available state programs. As for Safe Harbor defenses, petitioners and all other renters affected by respondent's decision to stop accepting ERAP applications will likely need counsel to help them assert these defenses. The court acknowledges petitioners' counsel's representation that the Legal Aid Society cannot represent all of these individuals and families.

Equities lie in petitioners' favor, to wit, by allowing them to file an application for ERAP, they will have the benefit of a stay of any eviction proceedings until that application is determined. If respondent receives sufficient funds and petitioners' applications are approved, their arrears may be discharged. However, if respondent is not directed to accept petitioners' applications, petitioners may be evicted and the program will be of no use to them after that point. Even if petitioners have not yet been evicted, at the least they should have the benefit of being able to apply for ERAP now and obtain their rightful place on a *de facto* waitlist rather than wait and join the onslaught of applications respondent may receive if it reopens the ERAP portal upon obtaining sufficient funding after March.

Respondent's counsel argues that it would give "false hope" to allow petitioners and others to file applications, since respondent believes it will not receive enough federal money to offer any additional ERAP assistance. Therefore, respondent's counsel asserts, that respondent cannot in good conscience accept further applications. Respondent has submitted the sworn affidavit of Barbara C. Guinn, its Executive Deputy Commissioner. Guinn manages respondent's operations and its policy decisions including the administration of ERAP. Guinn explains that respondent decided to close the ERAP portal in November after respondent received more applications than available ERAP funds could support "until it became more certain that additional ERAP funding would be made available by Treasury".

Respondent has failed to show that it is in any better position to know the results of the March 2022 reallocation than petitioners, this court, or any other relevant person/entity. Respondent can only surmise that it will not receive sufficient funds, and petitioner's counsel has explained why petitioners optimistically believe New York will obtain funds sufficient to exceed respondent's current liabilities. At this point, $18 billion of Congress' prior allocation is currently unspent and may be redistributed in March. New York, a state with one of the largest populations in the county, and which has been hit very hard by the pandemic, may likely be entitled to a significant portion of funds being reallocated. Thus, the court does not find that allowing petitioners and other individuals to file applications for ERAP would merely give them false hope. The court notes that respondent's shortfall includes a significant number of provisionally approved applications, and as petitioners' counsel points out, "[p]otentially hundreds of millions of dollars may also be reallocated from the funds provisionally approved, but not yet accepted by landlords."

On the contrary, there is little to no harm in directing respondent to begin accepting ERAP applications again. Logistically, all respondent need do is turn the appropriate functionality of its website on and perhaps, although not explained by respondent, review applications for eligibility. Such concerns cannot outweigh petitioners' potential evictions from their homes and due process to participate in a federal assistance program passed for their benefit in response to the ongoing Covid-19 pandemic. Further, by accepting applications, respondent is not guaranteeing that funds will be available. Rather,

applicants are on a *de facto* waitlist, and will receive funds in the order they filed their applications so long as funds are available. Respondent will know what funds are available by April, which is not in the distant future and well within the time contemplated by the legislature.

Thus, the court finds that petitioners have demonstrated a likelihood of success on the merits. While courts generally defer to agencies in the discharge of their duties, courts need not do so when an agency acts irrationally or arbitrarily. Respondent contends that it rightfully decided to stop accepting applications for rental assistance on November 15, 2021. The court disagrees. The New York legislature charged respondent with the responsibility to set up and administer ERAP, and so long as funds may be available, respondent's decision to stop accepting ERAP applications is necessarily irrational. The legislature provided that the ERAP program was to be funded by "(a) emergency rental assistance funds received by the state from the Federal Emergency Rental Assistance Program and any other federal funds made available for that purpose; and (b) any state funds appropriated for such program." 2021 N.Y. Laws Ch. 56, part BB, § 3 para. (2). Nowhere in the relevant legislation is respondent given parameters with which to stop accepting ERAP applications. The legislature was aware that funding would be given in several allocations. By choosing not to set forth parameters for when respondent should stop and start accepting applications, the legislature expressed its intent that respondent not do so. As proof that respondent's decision was irrational, renters in arrears like petitioners may fall into a gap between November 15, 2021 and when respondent may feasibly open applications again. To allow such a gap to exist is irrational.

Further, respondent arbitrarily decided to stop accepting applications on November 14, 2021 at 10pm. Someone could duly file an application at 9:59pm that day and obtain the benefit of the stay the legislature passed, and if someone tried to file their application a minute later, respondent thwarted the legislature's intent. Respondent's application deadline was not linked to what funds it had on hand, or a threshold number of applications or approved aid. Therefore, respondent's actions were arbitrary.

Accordingly, petitioners are granted a preliminary injunction and respondent NYS Office of Temporary and Disability Assistance must begin accepting new applications for the State's Covid-19 Emergency Rental Assistance Program as soon as is practicable but no later than three business days after entry of this decision/order.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED petition is granted to the extent that petitioners are entitled to a preliminary injunction directing respondent NYS Office of Temporary and Disability Assistance to begin accepting new applications for the State's Covid-19 Emergency Rental Assistance Program as soon as is practicable but no later than three business days after entry of this decision/order; and it is further

ORDERED that the balance of the petition is restored to the active calendar for submission of papers as outlined in the parties' stipulation on March 8, 2021.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: January 6, 2022
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.