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STATE OF NEW YORK
SYRACUSE CITY COURT COUNTY OF ONONDAGA

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SYRACUSE HOUSING AUTHORITY,

Petitioner,

vs.

ANN M. BOULE,

Respondent.

CLERK OF THE COURT
110 STATE STREET
SYRACUSE, NY 13202

Index No. 96/2160LT

**REPLY TO PETITIONER'S
MEMORANDUM OF LAW**

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INTRODUCTION

The H.U.D. regulation, at 24 C.F.R. §966.4(f)(12)(i)(B) states that a public housing tenant's lease shall provide that the tenant has an obligation to assure that the tenant's guest(s) shall not engage in any criminal or drug-related activity. A careful examination of the petitioner's brief indicates that the way that the petitioner would have this court interpret 24 C.F.R. §966.4(f)(12)(i)(B) is ~~in~~ contrary to legislative and administrative intent.

I. Ms. Boule's Conduct Was Reasonable And Does Not Warrant Eviction

In determining whether a public housing tenant can be evicted for the criminal activity of a guest, it must be determined whether the tenant foresaw or acquiesced in the guest's criminal activity. Nevertheless, in the case at hand, the petitioner argues on page 3 and 8 of its memo, that the respondent's lack of knowledge regarding her guests criminal activity is immaterial because she failed to investigate her guest's background and intention. However, the petitioner cites no legal authority to support this position.

Assuming arguendo that the respondent had an obligation to investigate the background and intentions of her guests, the respondent had sufficient knowledge of Melvin Troutman's background so as not to require further investigation. Melvin Troutman is the father of her son. He had, on numerous occasions in the past, babysat for the respondent without any incident or complaint from the SHA or other tenants regarding criminal behavior.' Therefore, under the circumstances, respondent had known Melvin Troutman well enough so that any further

¹In addition, based on respondent's knowledge, Melvin Troutman did not have a criminal record or engage in criminal activity.

investigation into his background was not warranted. Ms. Boule's prior knowledge of and experience with Mr. Troutman, including as a babysitter for her son, satisfied any affirmative obligation she had to investigate his background.

Moreover, the petitioner's argument implies that if the respondent had investigated Mr. Troutman's background she would somehow have discovered that he intended to sell drugs from her apartment. However, even if the respondent had hired a private detective to follow Mr. Troutman for a lengthy period of time, there is no indication that she would have discovered he was a drug dealer.²

Moreover, there is no evidence that indicates that Mr. Troutman had been involved in drug-dealing prior to his present arrest. Indeed, since the petitioner has acknowledged that there are no factual issues in dispute, we must assume that Mr. Troutman was not involved in previous drug-dealing activity. Furthermore, under the petitioner's interpretation that the law imposes a strict liability standard, all individuals would be evicted from public housing if a guest commits a criminal act on the premises even if an investigation, such as the one contemplated by the Petitioners, fails to reveal pertinent information which would have indicated a predisposition to commit the act(s) complained of. Therefore, as is further discussed *infra*, if the Petitioner's argument is accepted by this Court, the impact of such a ruling would be to eliminate the clear requirement in the law, as reflected by the legislative history of the 1990 Amendment to the Housing Act and the case law interpreting that Act, that the landlord apply these policies in a

²This raises the question, unanswered in the Petitioner's brief, of exactly what was expected of Ms. Boule in regard to the "investigation" requirement which the landlord reads into the law. To suggest, as the petitioner apparently does, that a tenant must conduct an extensive background check into the record of every person who enters her apartment is unreasonable and wholly unsupported by the law.

reasonable manner in light of all of the circumstances in each individual case. 24 C.F.R.

§966.4(F)(12)(i)(B).

The petitioner further asserts that the respondent failed to properly supervise her guest. The petitioner bases this accusation on the belief that if Mr. Troutman had been supervised properly, the drug activity would not have occurred. However, given the fact that Mr. Troutman was babysitting for the respondent it was impossible for her to supervise his every action. The very purpose of acquiring a babysitter is to relinquish oneself of supervisory duties. To require a public housing tenant to supervise their babysitters, presumably while the babysitter supervised her child, makes no sense. Furthermore, such a requirement would have a chilling effect on encouraging a public housing tenant to obtain self-sufficiency. A public housing tenant would be afraid to hire a babysitter for fear that their babysitter's unforeseeable conduct would result in eviction. Since one of the goals of the One Strike policy is to encourage self-sufficiency such a requirement would be contrary to that goal.

II. The 1990 Amendment To The Housing Act, The Implementing Regulations, And The One Strike Policy Memo Incorporate A Reasonableness Standard.

The court should find that the standard of care that should be imposed on a tenant to assure that a guest does not commit a criminal act should be what is reasonable under the circumstances. Clearly, Ms. Boule's actions, as reflected in the undisputed record of this case, meet any definition of reasonableness.³ In fact, the reasonableness standard has been embraced

³Indeed, the Petitioner's position that the law imposes a strict liability standard on tenants for the actions of third parties is an implicit rejection of their clear obligation to apply the eviction rules in a reasonable manner. It is suggested that the reason that the Petitioners cling to this notion is an implicit acknowledgement that, if this case is decided on a reasonableness standard, they could not prevail.

by both HUD and Congress. The One Strike memo clearly states in reason 5 on pages 8 and 9 of said memo that PHA's "should exercise reasonable discretion in light of all of the relevant circumstances. In particular, when a tenant has taken all reasonable steps to prevent the criminal activity, eviction may not always be warranted or proper..." Furthermore, the legislative history of the current law articulates the following:

The committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the PHA and the eviction court. For example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity. S. Rep. No 316, 101st Cong., 2d Sess. 179 (1990).

Thus, reasonableness under the relevant circumstances is the standard of care that must be imposed on the respondent and therefore, since the level of supervision and investigation required by the petitioner into Mr. Troutman's background is not reasonable under the circumstances, the petition must be dismissed.

The petitioner further argues in footnote 2 of their memorandum of law that the legislative history of the 1990 amendment is not authoritative because PHA's had the right to evict public housing tenants based on criminal conduct prior to 1990. The Petitioner's point is irrelevant. The real issue is whether the 1990 Amendment in any way alters the prior law that a tenant may not be evicted for the actions of a third party unless there is a showing that the tenant acquiesced in or had knowledge of the offending conduct. As the Respondent has stated in her initial Memorandum, and herein, nothing in the 1990 Amendment alters that standard. Further, as the petitioner acknowledges, the 1990 amendment covers drug-related or criminal conduct that threatens the health, safety or peaceful enjoyment of PHA tenants or employees. Paragraph 6 of

SHA's petition incorporates the exact language of the 1990 Amendment. Further, the 1990 amendment is current law and is the statutory basis for the One Strike Policy. Thus, the court should find that the legislative history of the 1990 amendment is authoritative.

Nevertheless, the petitioner further argues that the legislative history should not be examined because the statutory language is not ambiguous. Although the general rule is that a court should apply the plain meaning of a statute, this does not require the mechanical application of the language in all circumstances. See Doctor's Council v New York City Employees' Retirement System, 71 N.Y.2D 669, 529 N.Y.S.2d 732 (1988); See also, Charlotte Housing Authority v Paterson, 464 S.E.2d 68 (N.C. Ct. App. 1995) (holding that the legislature did not anticipate that 42 U.S.C. §1437d (1) (5), (1990), should be interpreted as imposing absolute liability regardless of individual knowledge or culpability). The ordinary or literal meaning of language employed may be restricted or expanded if a literal application will cause an absurd or unjust result contrary to legislative intent. See Doctor's Council, supra.; Williams Williams, 23 NY2d 592, 298 NYS2d 473 (1969); Lower Manhattan Loft Tenants v New York City Loft Bd., 66 NY2d 298, 496 NYS2d 979 (1985); Zaupone v Home Ins.Co. 55 NY2d 13 1, 447 NYS2d 911 (1982) ; Male F, 97 Misc. 2d 505, 411 NYS2d 982 (1978); Caraballo v Community School Board 49 NY2d 488, 426 NYS2d.3 974 (1980). Therefore, because the petitioner's interpretation of the statute would be clearly contrary to legislative intent, whereby a public housing tenant would be evicted regardless of their knowledge of or acquiescence in a guest's criminal activity, the petitioner's interpretation of the statute, if accepted, would work an absurd and unjust result in this case and should be disregarded. Insofar as the Petitioners have the discretion to decide, on a case by case basis, whether the particular circumstances of a case

merit eviction, the decision to evict in this case is an abuse of discretion because, as Petitioners admit, they do not consider the reasonableness of Ms. Boule's actions to be a relevant consideration. Petitioner's Brief at 8 (Arguing that Ms. Boule's lack of knowledge of Mr. Troutman's conduct is "irrelevant.")⁴

III. The case law cited by the petitioner is distinguishable from the case at hand.

The petitioner argues that the SHA's lease with the respondent clearly requires the respondent to assure that her guests do not commit criminal acts on SHA property and that violation of this promise is cause for eviction. The petitioner cites, City of South San Francisco v. Guillory, 41 Cal. App. 4th Supp 13, 49 Cal Rptr.2d 367, 1995 Cal App. LEXIS 1290 (Sup. Ct. 1995) in support of their argument. However, unlike the respondent's lease, the lease in Guillory, uses the term Zero Tolerance to drugs. Furthermore, the lease in Guillory articulates that drug related activity entitles the housing authority to evict the tenant c e t h e respondent's lease does not use language as clear as the language used in Guillory, the cases are clearly distinguishable.

The petitioner also cites Minneapolis Public Housing Authority v Holloway, 1995 Minn. App. LEXIS 1028 (Minn. Ct. App. 1995) and Housing Authority of the City of Atlanta v Davis, 158 Ga. App. 600,281 S.E. 2d 345 (Ga Ct. App. 1981), to support the proposition that lack of

⁴Indeed, the Petitioners, in arguing this point, implicitly acknowledge that it is inappropriate to evict a tenant who has no knowledge or control over the conduct of the third party. Petitioners state: "Respondent breached her duty by *allowing* Melvin Troutman, Lee Leonard and Kareem Troutman to sell crack cocaine from her apartment." id. (emphasis added) However, there is absolutely no evidence in the record that Ms. Boule *allowed* anyone to sell drugs from her apartment. Allowance is an affirmative and volitional action, and, therefore, it cannot be said that Ms. Boule allowed the objectionable conduct if she did not know if it.

foreseeability of criminal conduct of a public housing tenant's guest is irrelevant. However, the courts in Holloway and Davis failed to take into consideration the legislative history interpreting the statute which, as previously indicated, clearly reveals the legislative intent to the contrary.

Moreover, in Holloway there was a pattern of continuing criminal activity by the tenant's guest including the firebombing of a house on the PHA property, two drive by shootings, repeated damage to the apartment, and other incidents, which occurred over an extended period of time. However, in the case at hand, there was only one isolated incident. Furthermore, unlike the tenant in Holloway, who left her apartment for three or four weeks, the respondent was gone only for a few hours. Thus, the respondent did not relinquish control of her apartment as petitioner asserts.

Petitioner further attempts to distinguish Edwards v. Christian, 61 A.D. 2d 1045,403 N.Y.S. 2d 119 (2d Dept. 1978) aff'd 46 N.Y. 2d 964,415 N.Y.S. 2d 828 (1979), City of New York v. Cloud, N.Y.L.J., 5/24/95, pg. 29, col. 1 and Stroman v Franco, N.Y.L.J. 4/24/96, pg. 25, col 5. The petitioner asserts these cases are distinguishable because in each case the criminal actor's conduct did not occur inside the tenant's apartment. However, the petitioner's distinction is irrelevant because 24 CFR §966.4 (f) (12) (i) (B) specifically prohibits drug-related activity both inside and near a public housing tenant's apartment.

Furthermore, the petitioner asserts that Christian and Stroman are distinguishable because in both cases the tenant's guest did not occupy the tenant's apartment. However, contrary to petitioner's assertion, similar to Christian and Stroman, Melvin Troutman was not an *occupant* of the respondent's apartment. Furthermore, the court's ruling in Stroman was based upon the partiality of the hearing officer and the decision does not articulate whether or not the

criminal actor was an occupant of the premises. Moreover, it is not clear, from the court's ruling in Christian, whether the criminal actor was or was not an invitee on the public housing authority premises.

Lastly, similar to Stroman and Cloud, the respondent is a working mother and a long ten-n public housing tenant who had never been accused of wrongdoing. Therefore, just as the court articulated in Stroman that an eviction would be "so disproportionate to the offenses as to be shocking to one's fairness", the same conclusion should be reached here.

The petitioner further asserts that respondent's reliance on Tyson v. New York City Housing Authority, 369 F.Supp. 513 (S.D.N.Y. 1974) is misplaced. In Tyson, the court held that implicit within the concept of due process is that liability may be imposed on an individual only as the result of that person's own acts or omissions, not merely because of his association with any group. The petitioner alleges that because the facts of Tyson are distinguishable from the facts at hand, reliance on Tyson's due process principle is misplaced. However, principles of due process are universal and are not barred by factual distinctions. Indeed, the Petitioner's attempt to distinguish Tyson from this case actually underscores Ms. Bottle's point that there is a clear distinction between this case and those cases in which the Courts have upheld evictions of tenants because of the actions of third parties. In Lopez v Henry Phipps Plaza South Inc., 498 F2d 937 (2d Cir. 1974), the Court recounted a litany of horrors, including public drunkenness and assaultive actions on the part of the husband, arrests of tenant's son for felonious burglary and criminal mischief near the apartment, acts of burglary and armed assault by the tenant's son, resulting in the use of deadly force to apprehend him, and arrest of the husband for reckless endangerment and resisting arrest by pulling a knife on a law enforcement officer. These actions

spanned a period of over a year. *id.* at 940. Thus, contrary to Petitioner's assertion, the Lopez case is factually distinct from this case. In any event, the operative principle in Tyson is the constitutionally required element of a showing of individual responsibility prior to the imposition of a penalty. Thus, Tyson's due process principle is applicable to the case at hand and therefore, since the respondent did not commit, have knowledge of or acquiesce in any criminal conduct, it would be unconstitutional to penalize her for the acts committed by another individual.

IV. Placing the criminal actors on the trespass list is a reasonable alternative to evicting the respondent.

Petitioner asserts that placing the criminal offenders on the public housing trespass list will unlikely prevent them from selling drugs from or near the respondent's apartment. Respondent concedes that, while placing these individuals on the trespass list would not guarantee that they would not return, evicting the respondent also does not hold such guarantees. Indeed, because the respondent has an incentive to ensure that the criminal actors do not return, her eviction would be contrary to the petitioner's assertions.

The petitioner further argues that the housing authority previously placed two individuals on the trespass list because of the respondent and, that this shows her lack of control and responsibility over her guests. The first problem with this argument is that there is no evidence to support it in the record of this case. Secondly, the two individuals who were previously placed on the housing authority trespass list falsely indicated that they were occupants of the respondent's apartment. Moreover, these two individuals were not even guests of the respondent at the time of the prior incidents. Thus, the Respondent cannot be blamed for the actions of these

two individuals. Lastly, the burden articulated by the petitioner is unreasonable. As articulated in Christian, a tenant cannot be expected to physically prevent an individual from visiting the housing authority's property. Therefore, since the respondent has not allowed any individuals on the trespass list to visit the property, she has acted in a reasonable manner.

CONCLUSION

For the above- mentioned reasons, the petitioner's petition should be dismissed and the respondent should not be evicted.

Dated: August 1, 1996

Respectfully submitted.

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