

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

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In the Matter of the Application of

Letitia James as the Public Advocate
for the City of New York; Constance Taylor;
Odalis Polanco; and Arlene Riley

INDEX NO.

102198/2015

Petitioners,

For Judgment Pursuant to Article 78
of the Civil Practice Law & Rules and
Declaratory Judgment

VERIFIED PETITION AND
ACTION FOR
DECLARATORY
JUDGMENT

-against-

New York City Housing Authority;
and Shola Olatoye, CEO, in her official capacity,

**NEW YORK
COUNTY CLERK'S OFFICE**

DEC 15 2015

**NOT COMPARED
WITH COPY FILE**

Respondents.
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PRELIMINARY STATEMENT

1. This is a proceeding brought pursuant to Article 78, § 7801 and § 7803(1) of the Civil Practice Law and Rules ("C.P.L.R."), seeking an order directing Respondents to comply with Administrative Code § 27-2029 and New York City Health Code § 131.07 by immediately revising their policy regarding heat in residential buildings operated by the New York City Housing Authority ("NYCHA"). The suit is brought by the Public Advocate for the City of New York, Letitia James; and NYCHA residents Constance Taylor, Odalis Polanco, and Arlene Riley ("Petitioners").

2. Petitioners further request a declaratory judgment pursuant to CPLR § 3001 that Respondents have failed to comply with Administrative Code § 27-2029 and New York City Health Code § 131.07 by failing to provide heat in its residential buildings.

3. Petitioners bring this action pursuant to CPLR §§ 6301 and 6311 to enjoin Respondents from failing to provide heat in accordance with the applicable heating provisions.

4. Administrative Code § 27-2029 and New York City Health Code § 131.07 specify when a landlord must turn on the heat for a residential building.

5. NYCHA has consistently and repeatedly failed to provide sufficient heat in multiple buildings over the course of multiple years in violation of these provisions.

6. NYCHA's internal communications has confirmed that this failure to provide adequate heat is intentional and the result of explicit NYCHA heating policy decisions. As such, NYCHA's current heating policy expressly violates city law. These circumstances endanger the health, safety, and comfort of NYCHA residents. NYCHA must provide the statutorily required heat.

7. Petitioner Letitia James is the city-wide elected Public Advocate for the City of New York. In her position as Public Advocate, Petitioner is responsible for monitoring and reporting on the performance of city agencies.

JURISDICTION

8. The Court has jurisdiction over Petitioner's claims pursuant to C.P.L.R. § 7801.

9. C.P.L.R. § 7803(3) authorizes a special proceeding to be brought against a body or office whose determination was "made in violation of lawful procedure, was effected by an error of law or was arbitrary and capricious or an abuse of discretion." C.P.L.R. § 7803(3).

VENUE

10. Venue is properly laid in this Court under C.P.L.R. §§ 506(b), 7804(b), and 503 as Respondents all have principal offices in this county.

PARTIES

11. Petitioner LETITIA JAMES is the duly elected Public Advocate for the City of New York, with a principal place of business in the borough of Manhattan.

12. Petitioner CONSTANCE TAYLOR is the tenant of a public housing apartment located in the Douglass Houses at 74-76 West 103rd Street, Apartment 4B, New York, NY 10025, owned and operated by Respondent NYCHA.

13. Petitioner ODALIS POLANCO is a tenant of a public housing apartment located in the Patterson Houses at 2615 3rd Avenue, Apartment 2D, New York, NY 10451, owned and operated by Respondent NYCHA.

14. Petitioner ARLENE RILEY is a tenant of a public housing apartment located in the Taft Houses 1365 Fifth Avenue, Apartment 13H, New York, N.Y. 10029, owned and operated by Respondent NYCHA.

15. Respondent NYCHA is a public corporation organized under the Public Housing Law that administers and operates public housing in the City of New York, and has a principal place of business in Manhattan.

16. Respondent SHOLA OLATOYE is Chair and Chief Executive Officer of NYCHA, and has a principal place of business in Manhattan.

STATUTORY AND REGULATORY FRAMEWORK

17. The Public Advocate for the City of New York, Letitia James, is a citywide elected official, the immediate successor to the Mayor, and an *ex officio* member of the New York City Council. New York City Charter (“Charter”) §24, 10, 24(9)(e).

18. The Public Advocate is charged with monitoring, investigating, and reviewing the actions of City agencies. She is also responsible for identifying systemic problems,

recommending solutions, and publishing reports concerning her areas of inquiry. She has the power to introduce legislation and hold oversight hearings on legislative matters.

19. The Office of the Public Advocate was created to serve as a “watchdog” against the inefficient or inadequate operation of City government.

20. The Office of the Public Advocate has received over 100 complaints regarding heat from NYCHA residents since January 1, 2014, including complaints made by Petitioner Odalis Polanco, affiant Charles Cordrey, and the tenants’ association at Douglass Houses. Her office has attempted to resolve many of those complaints through individual advocacy, and only recently became aware of the heating policy challenged in this proceeding.

21. NYC Administrative Code § 27-2029 provides, “Minimum temperature to be maintained,” states as follows:

- a. During the period from October first through May thirty-first, centrally-supplied heat, in any dwelling in which such heat is required to be provided, shall be furnished so as to maintain, in every portion of such dwelling used or occupied for living purposes: 1) between the hours of six a.m. and ten p.m., a temperature of at least sixty-eight degrees Fahrenheit whenever the outside temperature falls below fifty-five degrees; and 2) between the hours of ten p.m. and six a.m., a temperature of at least fifty-five degrees Fahrenheit whenever the outside temperature falls below forty degrees.

22. New York City Health Code § 131.07(c) provides that “the minimum temperatures required by subdivision (a) of this section shall be maintained as follows:”

- (1) In a dwelling, during the months between October first and May thirty-first between the hours of six a.m. and ten p.m.: a temperature of at least 68 degrees F when the outside temperature falls below 55 degrees F (12.78 degrees C) and during the hours between 10 p.m. and 6 a.m. a temperature of at least 55 degrees F (12.78 degrees C) whenever the outside temperature falls below 40 degrees F (4.44 degrees C);

23. When operating as a landlord, NYCHA has a statutory duty to provide heat consistent with the above statutory provisions. N.Y. Multiple Dwelling Law § 79.

24. Petitioners have observed that the heat has not been turned on consistently in their residences despite the fact that the ambient temperature has dropped to levels requiring that the heat be activated.

STATEMENT OF FACTS

Weather Conditions in the Late Fall and Early Winter

25. New York City experiences cold autumns and winters. The average low temperature for New York in October, November, December January and February are 47°, 38°, 28°, 23°, and 24° Fahrenheit, respectively.¹

26. Since October 1, 2015, the ambient temperature has dropped below fifty-five degrees between six a.m. and ten p.m. and below forty degrees between ten p.m. and six a.m. on numerous occasions, triggering a legal requirement to provide heat.² NYC Admin. Code § 27-2029.

27. The ambient temperature is expected to be below 55° on most days for the rest of December.³

NYCHA's Illegal Heating Policy

28. On November 25, counsel for certain NYCHA tenants involved in a separate housing action sent an email to NYCHA counsel, alerting NYCHA that, after weeks of failure to provide heat when external temperatures required it, NYCHA had briefly turned on the heat in

¹ Historical average temperatures, New York City, available at www.intellicast.com/Local/History.aspx?location=USNY9472

² <http://www.accuweather.com/en/us/new-york-ny/10007/month/349727?monyr=11/01/2015>

³ <http://www.accuweather.com/en/us/new-york-ny/10007/month/349727?monyr=12/01/2015>

the tenants' buildings, then shortly thereafter turned the heat off again. Tenants' counsel asked that consistent heat be provided and noted that tenants were experiencing severe cold and discomfort. Affirmation of Satyam N. Bee, dated December 14, 2015, ("Bee Aff.") at Ex. A.

29. Counsel for NYCHA responded in an email dated November 25, 2015, forwarding a communication for the Director of NYCHA's Heating Services Department, which stated that "NYCHA *official policy* and DOH requirement is heat shut off between 10 p.m. and 5 a.m. when the outside temps are above 20 degrees. When the outside temperature falls below 20 degrees heat is given through the night." (emphasis added). Bee Aff. at Ex. A.

30. NYCHA personnel have informed Petitioner Polanco that, at the Patterson Houses, the heat is not turned on during the day unless the temperature falls below fifty degrees Fahrenheit. Affidavit of Odalis Polanco, dated December 15, 2015, ("Polanco Aff.") ¶ 6.

31. This NYCHA policy is in direct contravention of Administrative Code § 27-2029, and New York City Health Code §131.07.

32. NYCHA itself concedes, in its own tenant handbook, that it is bound to provide heat as set forth in these statutes.⁴

33. Since NYCHA acts as the landlord for Petitioners' residential units, it must comply with the applicable laws regarding when the heat must be turned on.

NYCHA's Failure to Provide Adequate Heat

34. Despite the requirements of NYC Administrative Code § 27-2029 and New York City Health Code § 131.07(c), NYCHA has failed to provide adequate heat, both historically and in the current 2015-2016 heat season. The experience of the Petitioners, described below, is representative of this chronic failure, which is the result of NYCHA's illegal heating policies.

⁴ See page 34 of NYCHA's 2014 Handbook for Residents at <http://www1.nyc.gov/assets/nycha/downloads/pdf/nycha-tenant-handbook-2014.pdf>.

Constance Taylor

35. Petitioner Taylor is a 62 year-old disabled woman who has lived in Apartment 4B of 74-76 West 103rd Street, a NYCHA building, for her entire life. Affidavit of Constance Taylor, dated December 15, 2015, (“Taylor Aff.”) ¶¶ 1-2.

36. Over the course of the last 10 years, Petitioner Taylor and others in her building have noticed that NYCHA has begun providing heat later and later in the heating season, even when external temperatures are well below the statutory minimums. Taylor Aff. ¶ 3.

37. This historical pattern has continued this year. In five of the eight days starting Monday, November 23, 2015, the daily high and low temperature in Petitioner Taylor’s area were not above 50° and 40° Fahrenheit, respectively.⁵

38. During this time NYCHA provided essentially no heating—the heating system was started on one of these days, and then only briefly. Heat was never provided after 10:00 p.m., despite the extreme low temperatures during this time. Taylor Aff. ¶¶ 4-5.

39. Petitioner Taylor states that heat remains intermittent at this time, despite the continued cold, and the temperature of her apartment often falls below the statutory minimums. Taylor Aff. ¶ 4.

Charles Cordrey

40. Charles Cordrey is a resident of the Marble Hill Houses located at 5210 Broadway, Apt. 13E, New York, NY. Affidavit of Charles Cordrey, dated December 8, 2015, (“Cordrey Aff.”) ¶ 1.

41. Charles Cordrey has not had heat since February 2015. Cordrey Aff. ¶ 3.

⁵ Historical New York City temperature information available at www.wunderground.com/history/airport/KNYC/2015/11/22/DailyHistory.html?req_city=New%20York&req_state=NY&req_statename=New%20York&reqdb.zip=10036&reqdb.magic=1&reqdb.wmo=99999.

42. Charles Cordrey suffers from chronic asthma and a lumbar spine. The lack of heat has exacerbated these conditions. Cordrey Aff. ¶¶ 1, 9.

43. Charles Cordrey has filed complaints with NYCHA but has received no response. Cordrey Aff. ¶ 6.

Odalis Polanco

44. Petitioner Polanco has lived at the Patterson Houses at 2615 3rd Avenue, Apt. 2D New York, NY with her three children for seven years. Polanco Aff. ¶ 1.

45. Petitioner Polanco has had issues with the heat since she moved into her apartment. Polanco Aff. ¶ 2.

46. Petitioner Polanco has not had heat for several months. Polanco Aff. ¶ 5. When Petitioner Polanco complained about the lack of heat, she was told that the boiler for the Patterson Houses was broken. Polanco Aff. ¶ 4. Although a mobile boiler was installed, it has not provided sufficient heat. *Id.*

47. When Petitioner Polanco complained about the lack of heat, a member of the Patterson Houses' maintenance department told her that the boiler is turned off between 10 p.m. and 6 a.m. and that during the day the boiler is only turned on if the outside temperature falls below fifty degrees Fahrenheit. Polanco Aff. ¶ 6.

48. Because there is no heat, water has started to condense in Petitioner Polanco's apartment, causing mold to form on the walls and floors. Polanco Aff. ¶ 8.

Arlene Riley

49. Petitioner Riley has lived at the Taft Houses, located at 1365 Fifth Avenue, New York, NY for ten years. Affidavit of Arlene Riley, dated December 10, 2015 ("Riley Aff.") ¶ 1.

50. Petitioner Riley has not had heat in her apartment this year. Riley Aff. ¶ 3.

51. Petitioner Riley suffers from rheumatoid arthritis, which worsens in colder temperatures. Riley Aff. ¶ 2. Petitioner Riley's arthritis became so bad due to the lack of heat in her apartment that she inquired about transferring to a different apartment. Riley Aff. ¶ 2.

52. Petitioner Riley's son lives with her and has chronic asthma, a condition which is exacerbated by cold temperatures. Riley Aff. ¶ 2.

53. Petitioner Riley observed the temperature at her apartment every evening around 10 p.m. from December 6, 2015 to December 9, 2015. Riley Aff. ¶ 5. The temperatures in her apartment fell well below the statutory minimums on several of those days. *Id.*

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

54. Petitioners repeat and reallege paragraphs 1 through 53 as if fully set forth herein.

55. By failing to provide heat as required, Respondents have violated Administrative Code § 27-2029 and New York City Health Code §131.07.

56. By violating Administrative Code § 27-2029 and New York City Health Code § 131.07, Respondents have endangered the residents of all the buildings it administers and continue to put residents in situations that risk their health and safety.

57. Respondents have failed to perform a duty enjoined upon it by law pursuant to CPLR § 7803(1) by not providing heat consistent with Administrative Code § 27-2029 and New York City Health Code § 131.07.

58. Petitioners seek an order pursuant to Article 78, § 7801 and § 7803(1) of the C.P.L.R. that directs Respondents to comply with Administrative Code § 27-2029 and New York City Health Code §131.07 by providing functioning heat to the residents of all of its buildings when required by the above provisions and directing that Respondents establish systems to

affirmatively monitor the residences it operates to ensure that heat is provided consistent with the law for six months.

SECOND CAUSE OF ACTION

59. Petitioners repeat and reallege paragraphs 1 through 58 as if fully set forth herein.

60. Respondents' policy regarding when heat is provided violates Administrative Code § 27-2029 and New York City Health Code §131.07.

61. Petitioners seek a declaration pursuant to C.P.L.R. § 3001 that Respondents' policy regarding heat violates Administrative Code § 27-2029 and New York City Health Code §131.07.

RELIEF SOUGHT

WHEREFORE, Petitioners respectfully request that this Court enter judgment:

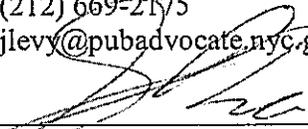
1. **Declaring** that Respondents have violated Administrative Code § 27-2029;
2. **Declaring** that Respondents have violated the New York City Health Code § 131.07;
3. **Directing** Respondents to immediately comply with Administrative Code § 27-2029 and New York City Health Code § 131.07 by providing functioning heat for the residences it operates;
4. **Directing** Respondents to immediately comply with Administrative Code § 27-2029 and New York City Health Code § 131.07 by establishing adequate systems to monitor all residences for a period of six months to ensure that the heat is turned on, and kept on, when required by law;
5. **Enjoining** Respondents from further violations of Administrative Code § 27-2029 and New York City Health Code § 131.07 by directing Respondents to provide heat when required by law;

6. **Granting** such other and further relief as the Court may deem just and proper.

Dated: December 14, 2015
New York, New York



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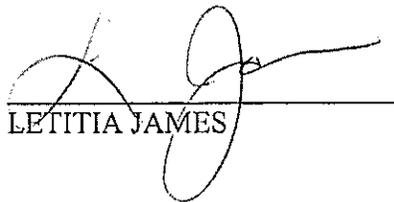
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VERIFICATION

STATE OF NEW YORK)
 :
COUNTY OF KINGS) ss.

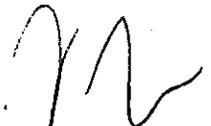
LETITIA JAMES, being duly sworn, deposes and says:

1. I am a Petitioner in the within proceeding. I am familiar with the facts herein.
2. The facts contained in the Petition are true based on my personal knowledge or based on a review of the records maintained by my office.



LETITIA JAMES

Sworn to before me this
14th day of December, 2015



Jennifer Levy
NOTARY PUBLIC, STATE OF NEW YORK
No. 02LE6332571
Qualified in Kings County
My Commission expires November 2, 2019