

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony D. Hill, :  
Petitioner :  
 :  
v. :  
 :  
Housing Finance Agency, : No. 1819 C.D. 2014  
Respondent : Submitted: May 22, 2015

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: June 26, 2015

Anthony D. Hill (Mr. Hill) challenges the order of the Pennsylvania Housing Finance Agency (PHFA) that affirmed the Pennsylvania Housing Finance Agency, Homeowners' Emergency Mortgage Assistance Program's (HEMAP) denial of mortgage assistance to Mr. Hill.

In August 2005, Mr. Hill secured a mortgage with Fay Servicing in the amount of \$55,000 for the purchase of his personal residence located at 2313 West Tioga Street, Philadelphia, Pennsylvania (Property).

In 2006, Mr. Hill was delinquent on his mortgage obligation and applied for and received a HEMAP loan. That assistance lasted for twelve months and Mr. Hill received \$10,463.68 in HEMAP funds. At the termination of the HEMAP assistance, Mr. Hill was to begin making repayments to the PHFA. Initially, Mr. Hill's monthly payments to the PHFA were \$50 per month, but were subsequently reduced to \$25 per month in August 2009. Despite the decrease in his monthly repayments Mr. Hill failed to satisfy his monthly obligation and currently owes a balance of \$7,825 on his first HEMAP loan.

On May 7, 2014, Citibank, N.A. as trustee for Citigroup Mortgage Loan Trust, Inc. Asset Trust, notified Mr. Hill that his home faced foreclosure because monthly mortgage payments were not made.

On June 3, 2014, Mr. Hill met with Clarifi, a consumer credit counseling agency, and prepared an application for a HEMAP loan. The PHFA received the document on June 12, 2014.

On June 27, 2014, the PHFA notified Mr. Hill that his application for a HEMAP loan was not approved and advised him of his administrative appeal rights.

On July 8, 2014, the PHFA received Mr. Hill's appeal. An administrative appeal hearing was subsequently held on July 31, 2014.

On August 12, 2014, the hearing examiner affirmed the PHFA's denial of Mr. Hill's application for HEMAP assistance. The hearing examiner determined:

The foregoing findings of fact demonstrate the Appellant [Mr. Hill] received a Homeowners' Emergency Mortgage Assistance Loan of \$10,463.68 in September 2006. The Appellant [Mr. Hill] stated he 'forgot' to pay the mortgage assistance loan. The last funds were received on June 1, 2012. The funds were applied to the September 2011 and October 2011 payments. Based on the laws which govern the Homeowners' Emergency Mortgage Assistance Loan Program, the minimal monthly repayment is \$25. The Appellant [Mr. Hill] had failed to pay even the minimal monthly payments required. Therefore, the mortgage assistance loan was

properly denied on the basis: Applicant [Mr. Hill] failed to comply with procedural requirements of Act 91: Applicant [Mr. Hill] failed to repay a prior mortgage assistance loan. (Act 91, Section 404-C(A)).

Based on the...Notice, dated May 7, 2014, the mortgage is delinquent from July 2012 or 26 months delinquent. The Appellant [Mr. Hill] already received approximately 12 months mortgage assistance on a prior Homeowners' Emergency Mortgage Assistance Loan. At the time the Appellant [Mr. Hill] received the prior loan, in September 2006, the maximum limit of assistance was 24 months. Therefore, the maximum limit the Appellant [Mr. Hill] would be eligible for is 24 months of assistance which includes the prior loan and the current delinquency. To bring the present delinquency current would require 26 months of assistance. Adding the 12 months the Appellant [Mr. Hill] received in September 2006 equates to 36 months assistance, or 12 months more than the maximum 24 month limit of the Program. The Appellant [Mr. Hill] has no funds saved to apply toward the mortgage delinquency and he has no income to enable him to resume full mortgage payments. Therefore, the Appellant is ineligible for a mortgage assistance loan and the mortgage assistance loan was properly denied on the basis: No reasonable prospect of Applicant [Mr. Hill] resuming full mortgage payments within twenty-four (24) months from the date of the mortgage delinquency and paying the mortgage(s) by maturity based on: Applicant's [sic] [Mr. Hill] is insufficient to maintain mortgage. (Act 91, Section 404-C (A)).

Decision of Hearing Examiner, August 12, 2014, (Decision) at 4; Supplemental Reproduced Record (S.R.R.) at 4b. (Emphasis added.)

Essentially, Mr. Hill contends<sup>1</sup> that the PHFA erred when it determined that he failed to meet the requirements for eligibility for a HEMAP loan.<sup>2</sup>

Section 404-C(a)(5) of the Housing Finance Agency Law (Law)<sup>3</sup>, 35 P.S. §1680.404c(a)(5),<sup>4</sup> provides that no assistance may be made with respect to a mortgage unless:

The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within twenty-four (24) months after the beginning of the period for which assistance payments are provided under this article and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments.

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<sup>1</sup> This Court's review is limited to a determination of whether constitutional rights were violated, an error of law was committed, or the findings of fact are not supported by substantial evidence. *Fish v. Pennsylvania Housing Finance Agency*, 931 A.2d 764, 767 n.3 (Pa. Cmwlth. 2007).

<sup>2</sup> In his Statement of Questions Involved, Mr. Hill listed the following:

1. Whether the Respondent [PHFA] erred in finding that the Petitioner [Mr. Hill] failed to comply [sic] with procedural requirements of Act 91?

....

2. Whether there was any reasonable prospect of petitioner [Mr. Hill] resuming full mortgage payments within (24) twenty-four months from date of delinquency and paying the mortgage by maturity based on: petitioner's [Mr. Hill's] income is insufficient to maintain mortgage?

....

3. Whether Applicant [Mr. Hill] is suffering a financial hardship due to circumstances beyond his control?

....

Mr. Hill's Brief, Statement of Questions Involved, at 6.

<sup>3</sup> Act of December 3, 1959, P.L. 1688, *as amended*, 35 P.S. §§1680.101-1680.603a.

<sup>4</sup> This Section was added by the Act of December 23, 1983, P.L. 385.

In *Cullins v. Pennsylvania Housing Finance Agency*, 623 A.2d 951 (Pa. Cmwlth. 1993), this Court affirmed the PHFA's denial of an application for mortgage assistance. One of the reasons for the PHFA's denial was that there was no reasonable prospect that Bart Cullins (Mr. Cullins) and Valerie Cullins (Mrs. Cullins), the applicants, would be able to resume full mortgage payments within thirty-six months<sup>5</sup> and pay the mortgage in full by the maturity date. At the time of the hearing, Mr. Cullins was unemployed but anticipated being hired by a department store at \$6.50 per hour, coupled with another job obtained through a temporary agency. At that time Mrs. Cullins earned \$400.00 per month as a babysitter but intended to return to work full-time. The mortgage in question had a monthly payment of \$810.00 with a total monthly housing expense of \$1,331. *Cullins*, 623 A.2d at 951-952.

This Court agreed with the Agency that there was no reasonable prospect that Mr. and Mrs. Cullins could resume mortgage payments in thirty-six months and pay the mortgage in full by its maturity.

[T]he Agency cannot base its determination on speculative income. The record discloses that Mr. Cullins did not provide any evidence of guaranteed hours by the department store or by the temporary agency. Moreover, Mrs. Cullins' return to her former position was only a possibility. Neither the Act [Law] nor the Agency's regulations lend support to Appellants' [Mr. and Mrs. Cullins] position that speculative income may be considered. The Agency is bound to evaluate Appellants' [Mr. and Mrs. Cullins] eligibility on the basis of their actual income history. The hearing examiner, therefore, properly considered Appellants' [Mr. and Mrs.

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<sup>5</sup> At the time, Section 404-C(a)(5), 35 P.S. §1680.404c(a)(5), of the Law provided that full payments had to resume within thirty-six months rather than the current twenty-four months.

Cullins] only source of guaranteed income, the \$400 earned by Mrs. Cullins' babysitting services, in addition to Appellants' [Mr. and Mrs. Cullins] financial overextension.

*Cullins*, 623 A.2d at 954.

Here, Mr. Hill testified that his monthly expenses exceeded his income by more than \$700. Decision at 3; S.R.R. at 3b. Mr. Hill testified that he was not working but he received financial assistance from government funding. Mr. Hill also received food stamps and LIHEAP assistance which covered the costs of groceries and heating the Property. Notes of Testimony, July 31, 2014, (N.T.) at 16-18; S.R.R. at 48b-50b. Prior to his termination, Mr. Hill was employed by the City of Philadelphia for approximately six years. N.T. at 8; S.R.R. at 40b. During his employment, Mr. Hill suffered repeated assaults which resulted in twenty-six surgeries and multiple leaves of absences from work. N.T. at 5 and 11; S.R.R. at 37b and 43b. At the time of the hearing, Mr. Hill had an appeal with the City wherein he challenged his termination. N.T. at 8-9; S.R.R. at 40b-41b. Mr. Hill believed he would reacquire his job and could resume payments. N.T. at 15; S.R.R. at 47b.<sup>6</sup>

Mr. Hill did not provide documentation regarding the results of his appeal with the City. Given the lack of guaranteed employment, the degree to which Mr. Hill's expenses exceeded his income, and the amount of the delinquency on the mortgage, the PHFA's determination did not constitute an error of law and is supported by substantial evidence.

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<sup>6</sup> Mr. Hill referenced paystubs he included in Appendix B of his Brief. However, Appendix B was not included in the certified record and therefore cannot be considered by this Court.

The PHFA's interpretation of the Law is entitled to great weight and may be disregarded only if it is clearly erroneous. *See Felegie v. Pennsylvania Housing Finance Agency*, 523 A.2d 417 (Pa. Cmwlth. 1987); *Valentine v. Pennsylvania Housing Finance Agency*, 511 A.2d 915 (Pa. Cmwlth. 1986). To qualify for a mortgage assistance loan, an applicant must meet all of the criteria set forth in Section 404-C of the Law, 35 P.S. §1680.404c. Mr. Hill did not qualify because he did not prove that there was a reasonable prospect that he could resume full mortgage payments within twenty-four months, as required by Section 404-C(a)(5), 35 P.S. §1680.404c(a)(5).<sup>7</sup>

The hearing examiner and the PHFA did not err by denying Mr. Hill further HEMAP assistance. Accordingly, this Court affirms.

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<sup>7</sup> Because this Court agrees that Mr. Hill did not meet the requirements of Section 404C(a)(5) of the Law, 35 P.S. §1680.404c, and because an applicant must meet all of the requirements to qualify for a mortgage assistance loan, this Court need not address Mr. Hill's remaining issues.

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**PER CURIAM ORDER**

AND NOW, this 26<sup>th</sup> day of June, 2015, the Order of the Pennsylvania Housing Finance Agency in the above-captioned matter is affirmed.