

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Costa v. Fall River Housing Authority

453 Mass. 614 (2009) · Decided April 13, 2009

SUMMARY

The Massachusetts Supreme Judicial Court considers whether a public housing authority may terminate Section 8 rental assistance for nonviolent criminal activity that allegedly threatens the health, safety, or peaceful enjoyment of nearby residents. The court holds that reliable hearsay may support a termination decision, but concludes that the grievance panel’s process violated HUD regulations because of an impermissibly non impartial decision maker, insufficiently reliable hearsay, and an inadequate explanation of reasons. The judgment is affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Botsford, J.
JURISDICTION	Massachusetts
DECIDED	April 13, 2009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Fall River Housing Authority appealed from a Housing Court judgment granting Costa relief on her 42 U.S.C. § 1983 procedural due process claims arising from termination of her Section 8 benefits. The Appeals Court reversed in part and affirmed in part, and the Supreme Judicial Court granted further appellate review.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the material facts are undisputed and the ruling was correct as a matter of law. Questions of statutory interpretation are reviewed de novo.
PRECEDENTIAL VALUE	published binding opinion of the Massachusetts Supreme Judicial Court
PARTIES	Fall River Housing Authority v. Gale Costa

TOPICS

- procedural due process
- administrative law
- evidence
- civil rights

PRACTICE AREAS

administrative law

constitutional law

housing law

civil rights

evidence

QUESTIONS PRESENTED

1. Whether HUD regulations authorize a public housing authority to terminate Section 8 assistance for nonviolent, nondrug-related criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons in the immediate vicinity.
2. Whether a public housing authority may rely on hearsay evidence in deciding to terminate Section 8 assistance under the HUD regulations and the Due Process Clause.
3. Whether the FRHA's use of the same hearing officer in Costa's preliminary hearing and grievance-panel hearing violated the applicable HUD regulation requiring an impartial decision maker.
4. Whether the grievance panel's written decision satisfied the HUD requirement that it state the reasons for termination and make factual determinations based on a preponderance of the evidence.

HOLDINGS

1. HUD regulations permit a public housing authority to terminate Section 8 assistance for criminal activity beyond violent or drug-related conduct, including criminal conduct that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity.
2. Neither the HUD regulations nor procedural due process categorically bars a public housing authority from relying on hearsay evidence in terminating Section 8 assistance, but hearsay may support the decision only when it contains substantial indicia of reliability.
3. The detailed police report based on the detective's personal observations was sufficiently reliable to support a termination decision, but the newspaper article's unattributed, multilevel, conclusory hearsay was not sufficiently reliable to serve as the basis for termination.
4. The FRHA violated 24 C.F.R. § 982.555(e)(4)(i) by allowing the officer who had approved the termination decision at Costa's preliminary hearing to participate on the grievance panel, and the panel's written decision was inadequate because it failed to state specific factual findings, identify the criminal activity found, determine whether it threatened nearby residents, and show consideration of mitigating circumstances.

KEY QUOTATIONS

“due process demands that evidence be reliable in substance, not that its reliability be evaluated in “a particular manner.”” (625)

“hearsay evidence may form the basis of a PHA’s decision to terminate Section 8 assistance so long as that evidence contains substantial indicia of reliability.” (627)

“Regardless of the statutory or regulatory scheme, and regardless whether the hearing is [formal] or informal, no reviewing court can determine whether a hearing officer has fulfilled his statutory or regulatory obligations in the absence of an adequate record.” (632)

FACTUAL BACKGROUND

Costa participated in the FRHA's Section 8 rent subsidy program, which subsidized approximately eighty-five percent of the rent for her Fall River home. After an undercover police investigation, she was arrested and charged with soliciting sex for a fee and keeping a house of ill fame; the FRHA then initiated termination proceedings. At the administrative hearing, the grievance panel considered an unsigned police report, a newspaper article, Costa's testimony, and other materials, but terminated her benefits. The panel included a hearing officer who had previously conducted Costa's preliminary appeal proceeding and issued a decision identifying only the evidentiary sources rather than specific factual findings or the reasons the conduct threatened the neighborhood.

PROCEDURAL HISTORY

After the FRHA terminated Costa's Section 8 participation following her arrest, Costa exhausted the administrative appeal process and brought claims under 42 U.S.C. § 1983 and Massachusetts certiorari law in the Housing Court. On cross-motions for summary judgment, the Housing Court ruled that the HUD regulations did not authorize termination for the charged nonviolent, nondrug-related conduct and that the hearing process violated regulatory and constitutional due process requirements. The Appeals Court reversed the regulatory interpretation but agreed that the hearing and decision violated procedural due process. The Supreme Judicial Court affirmed the judgment on the due process claim, reversed on the interpretation of the HUD regulations, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Housing Court judgment was affirmed as to the second count, reversed as to the first count, and the matter was remanded for further proceedings consistent with the opinion. The Housing Court was to address any recalculation of attorney's fees and costs and apply the court's rulings concerning the regulatory interpretation, reliable evidence, impartial decision maker, adequate factual findings, and consideration of relevant circumstances.

CASES CITED

- Costa v. Fall River Hous. Auth., 71 Mass. App. Ct. 269 (2008)
- Massachusetts Bay Transp. Auth. v. Somerville, 451 Mass. 80, 84 (2008)
- Commonwealth v. One 1987 Mercury Cougar Auto., 413 Mass. 534, 536 (1992)
- Commerce Ins. Co. v. Commissioner of Ins., 447 Mass. 478, 481 (2006)
- Goldberg v. Kelly, 397 U.S. 254, 266-271 (1970)
- Clark v. Alexander, 85 F.3d 146, 150 (4th Cir. 1996)
- Carter v. Lynn Hous. Auth., 450 Mass. 626, 633-637 (2008)
- Commonwealth v. Durling, 407 Mass. 108, 115, 117-121 (1990)

- Crawford v. Washington, 541 U.S. 36, 61 (2004)
- Commonwealth v. Given, 441 Mass. 741, 747 n.9 (2004)
- Duarte v. Commissioner of Revenue, 451 Mass. 399, 412 (2008)
- Spence v. Gormley, 387 Mass. 258, 275 (1982)
- Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bonds, 27 Mass. App. Ct. 470, 475 (1989)
- Richardson v. Perales, 402 U.S. 389, 402-403 (1971)
- Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 530 (1988)
- Beauchamp v. de Abadia, 779 F.2d 773, 775-776 (1st Cir. 1985)
- Gammons v. Massachusetts Dep't of Hous. & Community Dev., 502 F. Supp. 2d 161, 165-166 (D. Mass. 2007), aff'd, 523 F. Supp. 2d 76, 85 (D. Mass. 2007)
- Basco v. Machin, 514 F.3d 1177, 1182-1183 (11th Cir. 2008)
- Matter of the Trusts Under the Will of Crabtree, 449 Mass. 128, 152-153 (2007)
- Cottam v. CVS Pharmacy, 436 Mass. 316, 320 (2002)
- Wojcik v. Lynn Hous. Auth., 66 Mass. App. Ct. 103, 110-112 (2006)
- Cole v. Metropolitan Council HRA, 686 N.W.2d 334, 338 (Minn. Ct. App. 2004)
- Edgecomb v. Housing Auth. of Vernon, 824 F. Supp. 312, 316 (D. Conn. 1993)
- Lowell Hous. Auth. v. Melendez, 449 Mass. 34, 39-40 & n.3 (2007)
- Boston Hous. Auth. v. Bryant, 44 Mass. App. Ct. 776, 780 (1998)
- Boston Hous. Auth. v. Bridgewaters, 452 Mass. 833 (2009)
- Fabre v. Walton, 441 Mass. 9, 10-11 (2004)
- T & D Video, Inc. v. Revere, 450 Mass. 107, 117 (2007)