

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D14768
O/gts

_____AD3d_____

Submitted - March 12, 2007

ROBERT A. SPOLZINO, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
WILLIAM E. McCARTHY, JJ.

2005-07953

DECISION & ORDER

In the Matter of New York City Housing Authority
Hammel Houses, appellant, v Ellamae Newman,
respondent.

(Index No. 19751/02)

Ricardo Elias Morales, New York, N.Y. (Nancy M. Harnett and Meredith G. Mialkowski of counsel), for appellant.

In a proceeding to recover possession of certain leased premises, the petitioner New York City Housing Authority Hammel Houses appeals, by permission, from an order of the Appellate Term of the Supreme Court for the Second and Eleventh Judicial Districts, dated October 29, 2004, which affirmed a judgment of the Civil Court of the City of New York, Queens County (Grayshaw, J.), entered May 4, 2004, denying the petition and dismissing the proceeding.

ORDERED that the order is reversed, on the law, with costs, the judgment of the Civil Court of the City of New York is reversed, and the petition is granted.

The respondent, Ellamae Newman, failed to obtain the project management's written permission to reside in the subject apartment while the tenant of record was still alive. In addition, there is no indication that the petitioner was actually aware of the respondent's residency and implicitly approved it. The respondent, for example, was never listed as an occupant of the subject apartment on any of the record tenant's annual income affidavits. Accordingly, the Appellate Term erred in determining that, upon the death of the tenant of record, the respondent was entitled to continue residing in the subject apartment as a "remaining family member" (*cf. Jamison v New York*

April 17, 2007

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City Hous. Auth., 25 AD3d 501; *Matter of McFarlane v New York City Hous. Auth.*, 9 AD3d 289;

Matter of Lancaster v Martinez, 298 AD2d 585; *Rentas v New York City Hous. Auth.*, 282 AD2d 215; *Matter of Shuet Ying Gee v New York State Div. of Hous. & Community Renewal*, 276 AD2d 444).

SPOLZINO, J.P., GOLDSTEIN, FISHER and McCARTHY, JJ., concur.

ENTER 

James Edward Pelzer
Clerk of the Court