

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

D32662
C/kmb

_____AD3d_____

Submitted - October 7, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2010-11261

DECISION, ORDER & JUDGMENT

In the Matter of Jamila Cortes, respondent,
v New York City Housing Authority, et al.,
appellants.

(Index No. 3681/10)

Sonya M. Kaloyanides, New York, N.Y. (Nancy M. Harnett, Corina L Leske, and
Seth E. Kramer of counsel), for appellants.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York City Housing Authority dated January 20, 2010, which, after a hearing, denied the petitioner's grievance seeking to establish her status as a remaining family member entitled to succeed to the tenancy of her late grandmother's apartment, the New York City Housing Authority and Cooper Park Houses appeal, by permission, from an order of the Supreme Court, Kings County (Jacobson, J.), dated August 12, 2010, which directed a further hearing on factual issues.

ORDERED that the appeal is dismissed, without costs or disbursements, and the order is vacated; and it is further,

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, without costs or disbursements.

Since the petition raises a question of whether the challenged determination is supported by substantial evidence, the Supreme Court should have transferred the proceeding to this Court (*see* CPLR 7804[g]). Nevertheless, because the record is now before this Court, we will treat the matter as one initially transferred here and will review the administrative determination de novo (*see Matter of Blake v New York City Hous. Auth.*, 78 AD3d 1175; *Matter of Roman v New York City Hous. Auth.*, 63 AD3d 845, 846).

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There is substantial evidence in the record to support the determination of the New York City Housing Authority (hereinafter the NYCHA) that the petitioner did not obtain the requisite written approval of the housing manager of the public housing development in which she lived to become a permanent member of her grandmother's household and did not thereafter continuously occupy her grandmother's apartment for a period of at least one year prior to her grandmother's death (*see Matter of Roman v New York City Hous. Auth.*, 63 AD3d at 846; *Matter of Hargove v Van Dyke Hous.*, 63 AD3d 741, 742; *Matter of Torres v Hernandez*, 55 AD3d 452, 452-453). Accordingly, the petitioner could not succeed to the tenancy of her late grandmother's apartment as a remaining family member, and the NYCHA correctly denied her grievance (*see Matter of Roman v New York City Hous. Auth.*, 63 AD3d at 846).

In light of our determination, we need not address the appellants' remaining contentions.

RIVERA, J.P., FLORIO, DICKERSON and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court