State of New York
Court of Appeals

OPINION



No. 5
In the Matter of Jonas Aponte,
Respondent,
v.
Shola Olatoye, &c., et al.,
Appellants.

Jane E. Lippman, for appellants.
Leah Goodridge, for respondent.
Letitia James, et al.; AARP et al., amici curiae.

WILSON, J.:

Jonas Aponte brought this CPLR article 78 proceeding challenging the New York City Housing Authority's (NYCHA) determination denying him "remaining family member" (RFM) status with regard to his late mother's apartment. We now reverse the Appellate Division and reinstate Supreme Court's denial of Mr. Aponte's article 78 petition.

In 2009, Mr. Aponte moved into his mother's one-bedroom apartment in a NYCHA-owned public housing development, and dutifully cared for her through her advanced dementia until she died in 2012. Two requests were submitted for Mr. Aponte to be granted permanent permission to live with his mother in her apartment; both were denied. Neither of the Apontes ever made a written request for Mr. Aponte to reside in the apartment on a temporary basis.[1]

After his mother passed away, Mr. Aponte requested that he be allowed to lease her apartment as a "remaining family member." NYCHA denied his request, and a hearing officer subsequently agreed, finding that Mr. Aponte lacked permanent permission to reside in the apartment, and that management properly denied such permission because Mr. Aponte's presence would have violated occupancy rules for overcrowding. Overcrowding, which, among other circumstances is defined as when a single adult and an adult child live together in a one-bedroom apartment, under NYCHA rules, precludes a person from seeking permanent permission for residency in the apartment. A person lacking permanent permission to reside in an apartment is not eligible for RFM status. NYCHA adopted the hearing officer's decision in its final determination denying Mr. Aponte's grievance.

[1] At oral argument, NYCHA's counsel explained that, in Ms. Aponte's case, NYCHA did not follow its procedures pertaining to disabled residents. Counsel represented that the building manager, knowing that Ms. Aponte suffered from severe dementia, required full-time care, and was seeking to have her son reside in her apartment to provide that care, should have ensured that a NYCHA representative directly communicated with the Apontes about the various options available to them under NYCHA's procedures, including the right to apply for temporary caregiver status for her son and to grieve an adverse decision. Counsel assured the Court that the breakdown here was atypical.

Thereafter, Mr. Aponte commenced this article 78 proceeding, arguing that NYCHA's decision was arbitrary and capricious, that he had a right to his mother's apartment, and that NYCHA's actions violated federal, state, and New York City antidiscrimination laws. "In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious" (Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]). "Arbitrary action is without sound basis in reason and is generally taken without regard to facts" (Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]). Moreover, "courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise" (Peckham v Calogero, 12 NY3d 424, 431 [2009]).

Under its rules, NYCHA could not have granted Mr. Aponte permanent permission to reside in his mother's apartment, and thus could not have granted his request for RFM status (Matter of Ortiz v Rhea, 127 AD3d 665, 666 [1st Dept 2015] ["(t)he only written consent petitioner ever acquired to occupy the apartment was as a temporary resident, which did not qualify her for RFM status"]; see also Matter of Banks v Rhea, 133 AD3d 745,745 [2d Dept 2015] [petitioner not eligible as a remaining family member when record "established that the petitioner never obtained written permission for permanent residency from the housing management"]). However, NYCHA's rules contemplate that a tenant may require a live-in home-care attendant, either for the duration of a transient illness or the last stages of life, and its rules expressly allow for a live-in home-care attendant as a

temporary resident, even if the grant of permission would result in "overcrowding," without regard to whether the home-care attendant is related to the tenant. Mr. Aponte was, in effect, afforded temporary residency status. Essentially, Mr. Aponte is arguing that NYCHA's policy is arbitrary and capricious because it does not allow him to bypass the 250,000-household waiting line as a reward for enduring an "overcrowded" living situation while caring for his mother. NYCHA could adopt the policy Mr. Aponte advocates, to encourage people to care for elderly relatives by giving them a succession priority over others, but we cannot say on the record before us that its adoption of a different policy, prioritizing children in need and persons facing homelessness when allocating its insufficient stock of public housing, is arbitrary or capricious.

Finally, to the extent Mr. Aponte argues that NYCHA violated federal, state and city antidiscrimination laws by refusing to provide a reasonable accommodation for his mother's disability by denying him permanent residency permission, that issue is not properly before us, as it was not raised at the administrative hearing (see Peckham, 12 NY3d at 430). Moreover, Ms. Aponte's Affidavits of Income submitted to NYCHA affirmatively stated she did not wish any accommodation for dementia. Despite the urging of Mr. Aponte and amici, this appeal does not raise the question of whether and in what circumstance NYCHA might be required to do more than grant temporary residence in an overcrowded apartment to make a reasonable accommodation.

Accordingly, the Appellate Division order should be reversed, without costs, and the order of Supreme Court reinstated.

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RIVERA, J. (concurring):

I agree that the Appellate Division should be reversed because, on this record, petitioner Jonas Aponte failed to establish that the New York City Housing Authority (NYCHA) erred in denying him remaining family member status or that he was discriminated against due to his mother's disability. I write separately to address petitioner's associational discrimination claim, which I believe is properly before us, even if the claim ultimately fails on the merits. I also write to address NYCHA's apparent policy and practice of treating identically all disabled tenants who request a full-time caretaker, without first engaging in the interactive process required by law to determine the tenant's needs and what constitutes a reasonable accommodation under the particular circumstances of each case. This one-size-fits-all approach violates the agency's obligations under the

Americans with Disabilities Act (42 USC § 12112), the New York State Human Rights Law (Executive Law § 296), and the New York City Human Rights Law (Administrative Code of City of NY § 8-107).

The facts that gave rise to this case disclose a striking and inexcusable breakdown in NYCHA's procedures for providing reasonable accommodations to people with disabilities. Petitioner's mother had advanced dementia. She repeatedly advised NYCHA that she needed her son to live with her as a full-time caretaker in order to accommodate her disability.[1] Nevertheless, NYCHA failed to refer Ms. Aponte's case to NYCHA's Reasonable Accommodations Coordinator, failed to provide Ms. Aponte or her son with an explanation of the accommodation services available to Ms. Aponte, failed to engage Ms. Aponte or her son in an interactive process to determine the scope of Ms. Aponte's

[1] As the majority observes (majority op at 4), Ms. Aponte never checked the box on her 2011 Affidavit of Income specifically requesting an accommodation for her disability, and, indeed, checked a different box affirming that, although there was someone in her household with a disability, she was not requesting the Housing Authority provide her with an accommodation. However, this Affidavit of Income must be considered in context. On the very same affidavit, Ms. Aponte notified NYCHA that her son was a person living in the apartment and explained again that she suffered from a "mental or psychological disability," further indicating she had Alzheimer's disease and dementia. In light of the foregoing, her affidavit cannot be read as an express abandonment of her request that her son live with her because she could not care for herself. No magic words are necessary to place NYCHA on notice that a disabled tenant requests a reasonable accommodation; a tenant need not use the words "reasonable accommodation" or even reference applicable antidiscrimination laws (see e.g. Requesting Reasonable Accommodation, EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the American with Disabilities Act [October 17, 2002] [observing that requests for accommodation need not mention the ADA or use the words "reasonable accommodation"]). On this record, the repeated requests NYCHA received to add petitioner to his mother's household are properly framed as requests for a necessary disability accommodation.

disability or what accommodations would allow her to enjoy equal use of her apartment, and failed even to expressly provide her son with Temporary Residency status, which NYCHA concedes he was entitled to as his mother's caretaker. Indeed, NYCHA denied Ms. Aponte's requests that petitioner be added to her household, even though she informed NYCHA that her disability – dementia – was cognitive, rendering it uncertain whether she could fully appreciate NYCHA's explanations for its denial.

Notwithstanding these facts and NYCHA's plain failures, NYCHA, admitting that its process could have been better, states that it nevertheless effectively accommodated Ms. Aponte's disability by awarding her son "de-facto temporary status." This post-hoc, ad-hoc rationalization merely obfuscates NYCHA's actual behavior. The agency did not even attempt to provide Ms. Aponte with the accommodation she requested. Mr. Aponte was only able to reside in his mother's apartment as her full-time caretaker because of mistakes or oversights by the agency's personnel. In other words, petitioner was able to care for his mother in her home because NYCHA violated its own rules. NYCHA's failure to follow its policies is not an acceptable approach to reasonable accommodation.

I agree that whether NYCHA failed to reasonably accommodate Ms. Aponte in violation of the law is not properly before us (majority op at 4). NYCHA's failure to accommodate Ms. Aponte's disability was not raised as part of the administrative hearing underlying this appeal, nor could petitioner have raised this claim on his mother's behalf (see Matter of Rivera v New York City Hous. Auth., 60 AD3d 509 [1st Dept 2009], citing Wilson v Association of Graduates of the U.S. Military Academy, 946 F Supp 294, 296

[SD NY 1996]). However, petitioner has set forth a colorable claim for associational discrimination in his own right (see 42 USC § 12112 [4]; Administrative Code of City of NY § 8-107 [20]; Dunn v Fisbhein, 123 AD2d 659 [2d Dept 1986]; Loeffler v Staten Island University Hosp., 282 F3d 268, 278-289 [2d Cir 2009] [Wesley, J. concurring]).

Turning to the merits of his claim, petitioner has failed to establish how he was discriminated against based on his association with his disabled mother. Petitioner was, in fact, allowed to live with his mother and care for her until the time of her death. Under these circumstances, petitioner has not shown that the denial of permanent residency status was related to his association with his disabled mother. Further, the record does not establish that petitioner was adversely affected by the agency's failure to award him the Temporary Residency status to which he was entitled under NYCHA's own policy. Petitioner may well have experienced fear, upset, and uncertainty as he cared for his mother under the threat of imminent removal, but he has not established entitlement to the specific relief he now seeks, namely succession rights to his mother's apartment.

It bears noting that NYCHA goes too far, however, when it argues that no set of facts would have allowed petitioner to be added to his mother's household as an accommodation for her disability. This conclusion is unsubstantiated, since NYCHA never made any effort to determine what accommodation was warranted.[2] The law is clear that

[2] As NYCHA conceded during oral argument, had Ms. Aponte established her need for essential medical equipment, she might have been entitled to a larger apartment as an accommodation for her disability, which would have removed one of the grounds for denying the request to add Mr. Aponte to her household. In a similar vein, amicus AARP suggests other scenarios in which a proper accommodation may be to grant caretakers the

every decision about what constitutes a reasonable accommodation is fact-specific and fact-intensive (see Noll v Intern. Business Machines Corp., 787 F3d 89, 94 [2d Cir 2015]). The Americans with Disabilities Act and the New York State Human Rights Law both clearly require this individualized consideration (see Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824, 836 [2014]; Noll, 787 F3d at 94), and the New York City Human Rights Law, as we have repeatedly held, goes even further (see Chauca v Abraham, 30 NY3d 325, 2017 NY Slip Op 08158 at *4; Jacobsen, 22 NY3d at 837-838). Even assuming, arguendo, that NYCHA may rely on general presumptions and categorizations to guide its determinations, procedures to ease the agency's administrative burden cannot substitute for the individualized consideration required by law. It is one thing not to engage in the required interactive process in an individual case, quite another to foreclose the interactive process on a class-wide basis (see Jacobsen 22 NY3d at 836-838 [observing that, although a judgment of discrimination on the basis of disability cannot be "solely based on the . . . failure to engage in an interactive process," reasonable accommodation requests "must (be) give(n) individualized consideration"]). In other words, NYCHA may rely on a policy that considers waiver of its overcrowding rules as a possible accommodation for full-time caretakers, but it cannot adopt that rule as its "default"

assurance of residency in a NYCHA apartment, lest the agency "risk consigning the aging resident to worse health outcomes and eventually an institution" (see Brief for AARP and AARP Foundation as Amici Curiae supporting Petitioner-Respondent at 14-18 [quotation on 18]).

position in all cases without any consideration of the individual tenant, or shift its burden by requiring the tenant to explain why its "default" accommodation is unreasonable.

As the Appellate Division observed, we will never know what accommodation Ms. Aponte may have needed and how NYCHA could have complied with its legal obligations to ensure her enjoyment of her apartment on an equal basis to nondisabled tenants. It appears Ms. Aponte received what she essentially wanted – the care of her son until the time of her death. However, this was not a result of NYCHA's reasonable accommodation of her disability. Our antidiscrimination laws make clear that the treatment NYCHA meted out to Ms. Aponte and her son was unacceptable. While in this specific case NYCHA did not technically violate its obligations under our federal, state, and local laws prohibiting discrimination on the basis of disability, the policies and rationalizations the agency has advanced in these proceedings raise profound concerns. Unless NYCHA changes its approach, it risks future cases in which it may not be so fortunate as to avoid liability based on the mistreatment of disabled persons and their full-time caretakers.

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Order reversed, without costs, and order of Supreme Court, New York County, reinstated. Opinion by Judge Wilson. Chief Judge DiFiore and Judges Stein, Fahey, Garcia and Feinman concur. Judge Rivera concurs in result in an opinion.

Decided February 15, 2018