

Rodriguez v Hernandez

2007 NY Slip Op 30547(U)

March 27, 2007

Supreme Court, New York County

Docket Number: 0400071/2007

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: RAKOWER Justice

PART 5

Index Number : 400071/2007

RODRIGUEZ, VICTORIA

vs

HERNANDEZ, TINI

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

motion to/for _____

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2, 3, 4
5, 6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED
MAR 27 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: March 27, 2007


EILEEN A. RAKOWER J.S.C.
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

[* 1]

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
VICTORIA RODRIGUEZ,

Petitioner,

Index No.
400071/07

- against -

TINO HERNANDEZ, as Chair of the New York City
Housing Authority, and the NEW YORK CITY
HOUSING AUTHORITY,

Respondents.

Decision
and Order

FILED

APR 05 2007

-----X
HON. EILEEN A. RAKOWER:

NEW YORK
COUNTY CLERK'S OFFICE

Elba Rodriguez (Elba) applied, and was found eligible, for an apartment with the New York City Housing Authority (Housing). In November, 1990, she moved into a one bedroom apartment at 1160 Watson Avenue, #5A, (the apartment) Bronx, New York. Petitioner married Elba's incarcerated son later that year and claims that she moved in with Elba at Elba's request in 1991. Petitioner maintains that she has resided in the apartment ever since, assisting in Elba's medical care.

Some ten years later, in August, 2001, Elba and Petitioner went to the Housing manager's office and requested that Housing grant Petitioner permission to temporarily reside with her because Elba had dizzy spells and sometimes had seizures at night. Permission to temporarily reside in the apartment was granted but the form stated that permission "expires on November 30, 2001 unless specifically extended in writing."

Approximately four years later, in June, 2004, an application was filed by Petitioner on Elba's behalf requesting that Petitioner be permitted to permanently reside with Elba. The application was disapproved because the apartment is a one bedroom and an "overcrowded condition" would be created by having another adult live there. Housing requires that all tenants adhere to the mandated occupancy standard which only permits two adults to reside in a one bedroom apartment if they are married or domestic partners.

001

Elba passed away in July, 2005. By letter dated October 11, 2005, Petitioner received a notice from the management office which stated that she was occupying the apartment without a lease and may be subject to eviction. It further informed Petitioner that she was entitled to a grievance proceeding to determine her status and eligibility for public housing. This apparently prompted Petitioner to go to the manager's office and submit a claim as a "remaining family member" which could permit her to remain in Elba's apartment. Petitioner was told that she was not entitled to succession rights because she never received permission to permanently reside in the apartment. She was informed about the grievance process, was given a list of attorneys and information regarding legal assistance.

Petitioner had an "informal hearing" with the Bronx Borough Manager but by notice dated March 7, 2006, she was informed that he agreed with the local manager's office that she was not entitled to succession rights. The notice also informed Petitioner how to pursue her claim to a formal hearing which was scheduled for July 26, 2006.

On July 24, 2006, two days before the formal hearing was to be held, Petitioner filed an Order to Show Cause in Bronx Supreme Court seeking an order vacating and annulling Housing's previous determinations, ordering Housing to give Petitioner a lease, staying the scheduled formal hearing and enjoining Housing from taking any legal action against Petitioner while her Bronx action was pending. A Justice of that Court signed the petition but the following day he vacated that portion of his order which stayed the scheduled July 26, 2006 formal hearing. By letter dated July 28, 2006, Petitioner withdrew her Bronx action.

The formal hearing was held on July 26, 2006, at which testimony was taken from a Housing witness and from Petitioner. By decision dated August 24, 2006, the Hearing Officer found that Petitioner may not succeed to residual tenancy because she never obtained written permission to be a tenant in the lawful tenant's household. Additionally, the Hearing Officer found that permanent permission for residency was properly denied based on the overcrowding condition that would have been created by Petitioner living in Elba's one bedroom apartment. The Hearing Officer concluded that Petitioner is not a remaining family member as that term is defined by Housing and the "regulations must be strictly applied to protect the integrity of the long waiting list for public housing." Petitioner was informed of this determination by letter dated September 13, 2006.

housing. Petitioner's argument that the inconsistency between permitting a temporary overcrowded condition and a permanent overcrowded condition is arbitrary also fails. It is apparent that any person might occasionally need assistance and the Manual explicitly makes allowance for such needs. However, it is equally apparent that an overcrowding condition should not be maintained for any extended period of time in violation of Housing procedures. Lastly, Petitioner's argument that there is no overcrowded condition in the apartment now that Elba is dead does not cure the initial impediment that she never received permission to permanently reside in the apartment.

Petitioner never obtained written approval from Housing to become a permanent household member of the then authorized tenant and unauthorized occupancy can not confer succession rights. (*Rentas v. The New York City Housing Authority*, 282 A.D.2d 215 [1st Dept. 2001]). Housing's decisions to disallow permission for permanent residency and deny succession rights to Petitioner was rational and in accordance with the law and the regulations that all residents of Housing must adhere to. Further, those decisions were amply supported by the evidence adduced at hearing. Housing has an obligation to protect the integrity of the application and placement process for the many people who are eligible for Public Housing but languish on lists due to the limited number of apartments available. Petitioner cannot expect to circumvent that process by unlawfully occupying her deceased mother-in-law's apartment.


Wherefore it is hereby

ORDERED that Petitioner's application to vacate and annul Housing's decision to deny her succession rights is denied.

All other requested relief is denied.

This constitutes the decision and order of the Court.

Dated: March 27, 2007



Eileen A. Rakover, J.S.C.

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