

**Matter of Rentas v Hernandez**

2007 NY Slip Op 31159(U)

April 30, 2007

Supreme Court, New York County

Docket Number: 0117966/2006

Judge: Walter B. Tolub

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

Index Number : 117966/2006

RENTAS, JR. LOUIS

VS.

HERNANDEZ, TINO

SEQUENCE NUMBER : 001

ARTICLE 78

PART \_\_\_\_\_

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is decided in accordance with the accompanying memorandum opinion.*

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

**UNFILED JUDGMENT**  
This judgment has not been entered for the County Clerk and notice of entry cannot be entered based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 4/30/07 \_\_\_\_\_ J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
 DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 15

-----X  
In the Matter of the Application of

LOUIS RENTAS, JR.,

Petitioner,

Index No. 117966/06  
Motion Seq. 001

For A Judgment Pursuant to CPLR  
Article 78

-against-

TINO HERNANDEZ, as Chairman  
Member of the New York City Housing  
Authority, and the Members of the  
New York City Housing Authority,

Respondents.  
-----X

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obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
41B).

**WALTER B. TOLUB, J.:**

In this Article 78 proceeding, petitioner Louis Rentas, Jr. moves for a judgment reversing and annulling an administrative determination issued by respondent New York City Housing Authority (the Housing Authority) on September 6, 2006.

The Wagner Houses is a public housing development owned and operated by the Housing Authority to provide public housing for low-income families. Petitioner seeks succession right to an apartment located within the Housing Authority's Wagner Houses development in Manhattan, specifically 10 F (the Subject Apartment), at 2405 First Avenue, New York, New York. Evangeline Rentas, petitioner's mother, and the tenant of record (the Tenant) of the Subject Apartment, died on January 4, 2004.

Subsequent to the Tenant's death, petitioner filed a grievance for succession rights to the Subject Apartment as a remaining family member, which was denied (Respondent's

Exhibit 4, Project Grievance Summary dated 11/28/05 [the Project Summary]). The Project Manager of the Wagner Houses noted in the Project Summary that, although petitioner had resided in the Subject Apartment, he had moved out of the household and his name had not appeared on an Affidavit of Income for that household from 1998 to the present. The Project Manager further stated that the Tenant had not made any request for petitioner to rejoin the household.

Pursuant to the established remaining family member grievance procedure, a Manhattan Borough Director reviewed petitioner's grievance and the Project Summary. She found that petitioner was an original member of the household who had moved out in November 1989, that the Affidavits of Income filed from 1998 through 2003 listed the Tenant as the sole occupant of the Subject Apartment and that the Tenant did not request and/or obtain management's permission for petitioner to rejoin the household (Respondent's Exhibit 5, District Grievance Summary dated 2/10/06 [the District Summary]). The Borough Director thus concurred with the reasons set forth by the Project Manager, and denied petitioner's grievance (id.).

Petitioner appealed the District Summary. The third-step grievance process provided for a hearing before a hearing officer, which commenced on June 16, 2006 and continued on July 12, 2006. The hearing officer found that petitioner did not qualify as a remaining family member because he was not an authorized member of the Tenant's household at the time of the Tenant's death, and dismissed petitioner's grievance (Respondent's Exhibit 6, Decision and Disposition dated 8/17/06). The New York City Housing Authority Board dismissed petitioner's grievance in compliance with the hearing officer's Decision and

Disposition (Respondent's Exhibit 7, Determination of Status for Continued Occupancy dated 9/6/06).

Petitioner now seeks to have the respondent's determinations denying his grievance annulled and reversed, claiming that they were arbitrary and capricious. Judicial review in an Article 78 proceeding is limited to a determination of whether the administrative agency's determination had a rational basis, or was arbitrary and capricious (see Matter of HLV Associates v Aponte, 223 AD2d 362 [1st Dept 1996]). Courts are not permitted to substitute their judgment for that of the administrative agency where said decision is rationally based on the record (see Matter of Royal Realty Co. v New York State Div. of Hous. and Community Renewal, 161 AD2d 404 [1st Dept 1990]).

Initially, petitioner contends that the hearing officer acted in an arbitrary and capricious manner by not allowing his witnesses to testify at the hearing. He claims that his witnesses' testimony would have supported his contention that he continuously resided in the Subject Apartment his entire life.

A review of the hearing transcript, however, discloses that the hearing officer did not act arbitrarily when he denied petitioner's request. The hearing officer was provided with evidence by petitioner, consisting of his testimony and submission of numerous documents, reflecting petitioner's address as that of the Subject Apartment. Based on the evidence, the hearing officer stated, on numerous occasions, that petitioner submitted sufficient evidence demonstrating that he lived in the Subject Apartment. The hearing officer denied petitioner's request for testimony by other witnesses, who were to testify only as to his residence in the Subject Apartment, stating that it was not needed and superfluous, since he believed that

petitioner lived thereat (Hearing transcript on 7/12/06, at 83).

Therefore, the hearing officer did not act in an arbitrary or capricious manner in denying petitioner's request, since the additional testimony would have been redundant (see Matter of William v Goord, 30 AD3d 801 [3rd Dept], lv denied 7 NY3d 706 [2006]). In any event, the hearing officer gave the petitioner three weeks to submit any letter or affidavit from his witnesses relating to his residence, if he so desired.

Additionally, petitioner contends that respondent's determinations denying his grievance for succession rights were arbitrary and capricious, and should be annulled, claiming that the evidence demonstrated that he continuously resided in the Subject Apartment without interruption since his birth, thus making him a remaining family member.

Respondent, the Housing Authority, opposes petitioner's application, claiming that its determinations are rational, since petitioner was not an authorized member of the Tenant's household at the time of the Tenant's death.

The Housing Authority's guidelines permit a qualified remaining family member of a tenant of record's household to succeed to a tenant's apartment, after the tenant of record either moves or dies, provided that the member meets certain criteria. The remaining family status applies to those persons who have moved into the apartment lawfully (1) as members of the original family composition (2) by birth or adoption subsequently moved in, or (3) with the written permission of the project management; and (b) have remained in the apartment continuously; and (c) are otherwise eligible for public housing in accordance with the standards for admission for applicants in the Housing Applications Manual (Housing Applicant's Management Manual, Chapter VII, § E [1] [a]; Respondent's Exhibit 2, General Management

Directive [GM], GM-3692 Amended, § IV.A; see also Matter of Mays-Watt v Hernandez, 196 Misc 2d 56 [Sup Ct, Bronx County 2003]). Original tenant family members who moved out of the house must seek written permission from the Housing Manager to rejoin the household (Respondent's Exhibit 2, GM-3692, § III C.3), and remain in continuous occupancy, i.e., to be listed on "all Occupant's Affidavit of Income from the date of issuance of written permission for permanent occupancy from the Housing Manager of not less than one year immediately prior to the date the tenant of record vacates the apartment or dies" (id., § IV.B, at 5). An unauthorized occupant in an apartment after the death of the tenant of record will not be entitled to remaining family member status or succession rights to the apartment (Exhibit 1, Manual, Chapter IV, Subdivision IV, F.4.b [10]).

In their review of the record, respondents consistently found that petitioner: (1) was an original member of the household, as the son of the Tenant; (2) had moved out of the Subject Apartment; and (3) was not listed as an occupant in the Tenant's subsequent Affidavits of Income, and that the Tenant had not sought written permission to add petitioner to the household.

In his determination, the hearing officer noted, inter alia, that: (1) the Housing Authority submitted into evidence an Interview record indicating that petitioner moved out in 1986, and the Tenant's affidavits of income for the years 1999-2003, which did not list petitioner as an occupant; (2) that Ibrahim Kallon, Housing Assistant of the Wagner Houses, testified that management was not aware of petitioner's return to the household; (3) that petitioner testified, inter alia, that he never moved out of the Subject Apartment, and speculated that the Tenant did not list him as an occupant because she had "money problems"; and (4) that petitioner submitted into evidence a number of documents tending to show actual occupancy for a number of years

prior to the Tenant's death.

Based on the record, the hearing officer found, inter alia, that even if [petitioner] never moved out, or at the minimum resided with the tenant for years before her death, she reported him out of the household in 1986, going so far as to show management apparent rent receipts showing a different address for him, and did not thereafter report his residence. It may well be that it was financial considerations which motivated her. Whatever her motivation, [petitioner's] residence was authorized because unknown, and hence he is not a remaining family member as defined by NYCHA's regulations.

(Determination dated 8/17/06).

The record sufficiently supports a rational basis for respondents' determinations denying petitioner's grievance for succession rights as a remaining family member based on the Housing Authority's regulations (see Jamison v New York City Housing Authority, 25 AD3d 501 [1st Dept 2006]). Thus, respondents' determinations are neither capricious nor arbitrary (see Matter of Chelrae Estates, Inc. v State Div. of Hous. & Community Renewal, Office of Rent Administration, 225 AD2d 387 [1st Dept 1996]).

Accordingly, it is

ADJUDGED that the petition is denied, and the proceeding is dismissed, with costs and disbursements to respondents.

The foregoing constitutes the decision and judgment of this court.

Dated: 7/30/07

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Room (Room 141B).