

Matter of Huff v New York City Hous. Auth.

2007 NY Slip Op 31454(U)

May 29, 2007

Supreme Court, New York County

Docket Number: 0117171/2006

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Justice

In re: Melody Hoff

INDEX NO.

117171/06

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

NYC Housing Authority

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

**motion (a) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

FILED

JUN 05 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/30/07

JUDITH J. GISCHE, J.S.C. J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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 10

In the matter of the Application of
MELODY HUFF

Petitioner,

-against-

THE NEW YORK CITY HOUSING AUTHORITY,

Respondents.

Decision/Order
Index#117171/2006
Mot. Seq.#001

Present:
Hon. Judith J. Gische
J.S.C.

Pursuant to CPLR §2219(a) the court considered the following numbered papers on this motion:

PAPERS

OSC, verified petition, exhibits.....1
Verified Answer, exhibits.....2

FILED NUMBERED
JUN 05 2007

Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Petitioner brings this Article 78 petition to challenge respondent's July 27, 2006 decision which denied her grievance. She alleges that she was wrongfully denied a lease to a NYCHA apartment as a remaining family member of the lease tenant who has since surrendered the apartment. For the reasons set forth below, the court remands the underlying grievance back to respondent for further proceedings consistent with this decision.

Since 1993, Monique Shakespeare ("Shakespeare") was the tenant of record for apartment #2B at 290 Frost Street in Brooklyn, New York ("apartment"). The apartment is operated by respondent ("NYCHA") as part of a housing complex that provides public

housing for low income families.

Petitioner claims in this proceeding that she moved into the apartment and resided with Shakespeare since 1995. Petitioner and Shakespeare are family friends, who according to petitioner, lived in the apartment and raised their families together. On July 12, 2004, Ms. Shakespeare sent management a letter that she had moved out of the apartment. Ms. Shakespeare states that petitioner had lived in the apartment since 1994.

There is evidence suggesting that Shakespeare had moved out well before 2004, and that she was residing in Maryland with her husband and child. Ms. Huff, however, has consistently claimed that Ms. Shakespeare's husband is in the military, and that when he is frequently away, Ms. Huff (and her child) live with Ms. Shakespeare (and her child) in Brooklyn, New York.

Under the current definition of remaining family member, Ms. Huff does not qualify to be the tenant. Ms. Huff argues, however, that when she applied for permanent status in 1996, she came within the existing definition of a remaining family member. She further argues that because her application was not acted upon within the required 90 day period, it should be deemed an approval and a waiver of any right of disapproval.

In December 1995 petitioner first applied for temporary residence in the apartment. That application was denied because it could not be established that Ms. Shakespeare lived in the apartment at that time. The matter was referred to the Investigator General for further action. There was apparently ongoing contact between petitioner and NYCHA and, in 1996, a further application for residency was submitted and rejected by respondent.

There is contradictory evidence regarding whether the 1996 application was for

“permanent” or “temporary” residency. On a form clearly designated as being for temporary permission to live with the tenant of record, the word “permanent” appears in handwriting. The length of stay requested is “indefinitely”. The form is not otherwise edited in any way to suggest that the request is for permanent residency. It incorrectly lists that Melody Huff is a “half sister” of Ms. Shakespeare and contains a signed acknowledgment by Ms. Huff that she must vacate the apartment upon the expiration of temporary permission. The form is dated 4/15/96 in handwriting, but there is no indication of when it was received by respondent. The action on the application shows that it was disapproved, without explanation. It is signed Jeanette Charles and dated 10/24/96, six month later. The October 1996 determination would have been timely for a temporary residence application, but untimely for a permanent residence application. Although a criminal background check was done on petitioner, it was requested by respondent on January 3, 1996, which is before the request for residency was made.

The challenged decision provides;

“Grievant argues that the superscript *Permanent* on exhibit 1 (and length of stay requested- *Indefinitely*) means the instrument was clearly intended to be treated as such. The Management Manual does not indicate a *criminal background for temporary requests*, yet the management submitted one, clearly treating the document as a request for permanent occupancy. It was not acted upon for six months, far beyond the 90 days allowed, after which approval would be deemed granted.”

Petitioner claims that this is a finding that the application in 1996 was for permanent status and it is inconsistent with the Hearing Officer’s conclusion that she is not a remaining tenant entitled to succession. She argues that the conclusion should therefore be vacated. Respondent claims that this is not a

finding at all, but rather a reiteration of petitioner's legal position which the Hearing Officer rejected. Petitioner further argues that respondent had knowledge of and acquiesced to her remaining as a tenant and it should not be allowed to take a contrary position at this time.

Where, as here, an agency has made a determination after a testimonial hearing, the decision should not be disturbed as long as it is supported by substantial evidence. CPLR §7803; Lahey v. Kelly, 71 NY2d 135 (1987); 300 Gramatan Ave. Associates v. State Division of Human Rights, 45 NY2d 176 (1978).

A *bona fide* family member remaining in an apartment in publicly funded housing may be entitled to a lease in his/her own name after the death or departure of the tenant of record. 24 CFR § 966. NYCHA defines remaining family member in its Management Manual. Prior to 2002, no familial relationship was necessary to permanently add a person to a tenant's household composition. Family was defined to include not only two or more persons living together related by blood, marriage or adoption, but also two or more unrelated persons, regardless of sex, living together as a cohesive family group in a sharing relationship. In 2002 the respondent's definition of family changed, so that now only the following relatives are eligible to receive permanent permission: husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother (including half-brother); sister (including half-sister) ; grandfather, grandmother, grandson, granddaughter, son-in-law, daughter-in-law; father-in-law; and/or mother-in-law. Thus while petitioner may have been eligible to obtain

status as a permanent resident prior to 2002 (provided her version of the facts was correct), she had no such right after 2002.

Insofar as relevant herein, in order to qualify as a remaining family member the applicant must:

[a] have moved into the apartment lawfully: [1] as a member of the original family composition, or [2] by birth or adoption subsequent to move-in or [3] with the written permission of management. Failure to comply with NYCHA's prior permission requirement is an appropriate legal basis to deny family member claims. Chavez v. NYCHA, 22 AD3d 408 (1st dept. 2005); McFarlane v. NYCHA, 9 AD3d 289 (1st dept. 2004).

Prior to 2002, respondent had a 90 day review period policy, pursuant to which if a request for permanent residency was made, and no determination was rendered within 90 days of the request, the application was deemed approved. This policy was rescinded in 2002 and it never applied to applications for temporary residence.

Preliminarily, the court rejects any claim that respondent knew of and acquiesced to petitioner's permanent occupancy of the apartment. Although petitioner claims to have occupied the apartment for ten years, she is listed only on one affidavit of income, that of 1998. Respondent never conceded her tenancy and indeed denied all of her applications for residence of any kind. In 1998 respondent tried to evict her. Respondent's position that petitioner has no rights to this apartment has been fairly consistent. There was apparently one administrative error made granting her temporary residence status, which was

shortly thereafter rescinded. This does not affect the conclusion that there simply was no acquiescence to petitioner remaining as a permanent tenant.

There is no question but that respondent expressly denied each and every application for residency submitted by petitioner. The only point of dispute is whether the rejection of the 1996 application was a timely rejection and whether the application was one for permanent residency.

Contrary to petitioner's claim, it does not appear that the Hearing Officer made a determination one way or the other about whether the application was for permanent or temporary residence. In any event, even if he did find the application was for permanent residence, it was based upon an unsupportable factual finding, i.e. that the criminal background investigation was ordered as a consequence of the 1996 application. The date of the criminal background check precedes the earliest date on the 1996 residence application. Thus it could not have been relied upon to prove that respondent treated the application as one for permanent residence.


Since the only basis on which petitioner could succeed in her bid to become a permanent tenant is if the 1996 application were for permanent residency and it was denied after the 90 day period had elapsed, there must be express factual findings on these disputed factual issues. Contrary to the finding of the Hearing Officer, the issue is not whether petitioner was prejudiced by inadvertent mistakes or whether she had the benefit of living in the apartment for ten years. If in 1996 petitioner had acquired constructive or deemed permission to occupy the apartment as a result of an untimely denial of her application for permanent

residency, then she legally would be entitled to continue as a tenant.

Accordingly the petition is granted only to the extent that the matter is remanded to respondent for a hearing to be conducted and a determination made whether petitioner applied for permanent status in 1996, is so when that application was made, and whether the denial was timely or not. This constitutes the decision and order of the court.

Dated: New York, New York
May 29, 2007

SO ORDERED:



J.G. J.S.C.

FILED
JUN 05 2007
NEW YORK
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