

Matter of Rivera v New York City Hous. Auth.
2007 NY Slip Op 32505(U)
August 7, 2007
Supreme Court, New York County
Docket Number: 0118115/2006
Judge: Joan Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon Joan A. Madden

PART 11

Index Number : 118115/2006

Justice

RIVERA, JULIO

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

NOTION DATE 4-19-07

NOTION SEQ. NO. _____

NOTION CAL. NO. _____

The following papers, numbered 1 to _____ motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion petition is decided in accordance with the annexed memorandum, Decision or Judgment

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 Desk (Room 41B)

Dated: August 7, 2007

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

-----X

In the Matter of the Application of
JULIO RIVERA,

Index NO. 118115/06
(Madden, J.)

Petitioner,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent,

-----X

JOAN A. MADDEN, J.

In this Article 78 proceeding, petitioner Julio Rivera, appearing pro se, challenges the determination of respondent New York City Housing Authority (NYCHA), denying his remaining-family-member claim for succession rights to a public housing apartment previously leased to his wife, the sole authorized occupant, who died in June 2005. NYCHA opposes the petition which is denied for the reasons below.

Background

In 2001, petitioner's estranged wife, Mirella Cabassa, ("Cabassa"), signed a lease for Apartment 10H, located at 219 East 97th Street, New York, NY, in NYCHA's Washington Houses development. According to NYCHA's records, Cabassa was listed as the sole authorized occupant of the apartment. Under her lease, Cabassa was required to report all apartment occupants and their income to NYCHA and to obtain NYCHA's prior written permission before allowing any other occupants to move into her apartment. On her annual income affidavits submitted to NYCHA in 2002, 2003, 2004, and 2005, Cabassa listed herself as the sole occupant

of the apartment.

On June 27, 2005, petitioner informed the Washington Houses management office that Cabassa had died on June 2, 2005, and stated he had been residing with her in the apartment for the past one-and-a-half years. Petitioner submitted a copy of Cabassa's death certificate as well as his and Cabassa's marriage certificate from 1984. Petitioner also submitted a letter to NYCHA in which he claimed he had lived in the apartment for "the past year and a half, and requested permission to enter the household as a permanent tenant." That same day, the management notified petitioner that although he was not a lawful occupant entitled to succession rights, he could pursue a grievance to seek remaining-family-member status.

On August 5, 2005, the petitioner met with the manager of the Washington Houses and, in support of his remaining-family-member grievance, stated he had been living in the apartment "for the past year and was taking care of his sick wife." The manager denied petitioner's grievance on the grounds that the petitioner was not eligible for succession rights because Cabassa "never sought permission for him to reside in the household." Additionally, Cabassa listed herself as the sole apartment occupant in the annual income affidavits she was required to submit to the NYCHA, including during the years petitioner claims to have resided with her. The NYCHA informed petitioner that it would review the decision and permitted him to submit any additional documents in support of his complaint. Petitioner did not submit any documents, and the NYCHA Borough Director affirmed the manager's decision.

In 2006, petitioner filed an Article 78 proceeding seeking review of the NYCHA's denial of his remaining-family-member grievance. The NYCHA agreed to provide petitioner with a third-step grievance hearing before an Impartial Hearing officer, and the Article 78 proceeding was discontinued. At the hearing, held on August 9, 2006, petitioner testified that Cabassa was

his lawful wife, they were married in 1984, and they lived together for two years until he moved out in 1986. He testified that he moved into her apartment shortly before her death “to take care of her” when she “became ill with cancer.” Petitioner confirmed that he “did not tell [the management office]” of his occupancy. He testified that he thought Cabassa would put his name “on the family composition” but conceded that she never did.

The Hearing Officer dismissed the grievance, finding no evidence the tenant had obtained written permission for petitioner’s occupancy from 2003 forward. By determination dated August 30, 2006, NYCHA’s Board upheld the hearing officer’s decision and dismissed petitioner’s grievance claim. Petitioner subsequently commenced this Article 78 proceeding.

Discussion

In reviewing an administrative determination, the Court must consider whether the agency’s determination had a rational basis or whether it was arbitrary and capricious. CPLR 7803; Matter of Colton, 21 N.Y.2d 322 (1967). The reviewing court does not examine the facts de novo to reach an independent determination, but must defer to the administrative fact finder’s assessment of the evidence. Lindemann v. American Horse Shows Ass’n., 222 AD2d 248, 250 (1st Dept 1999). Once a rational basis is found, the court’s review is complete and it may not substitute its judgment for that of the agency. See Pell v. Board of Education, 34 N.Y.2d 222 (1974).

NYCHA is funded and regulated by the United States Department of Housing and Urban Development (“HUD”), and must certify annually that it has admitted persons to public housing in accordance with HUD regulations. See 42 U.S.C. § 1437 et seq. (“Housing Act”); 24 C.F.R. § 960.201(a) & (c). HUD regulations require NYCHA to “establish and adopt written policies for admissions of tenants” to determine which of the hundreds of thousands of applicants on the

waiting list NYCHA will accept for the relatively few public-housing apartments that become available each year. See 24 C.F.R. § 960.202(a); see also N.Y. Pub. Hous. Law § 156.

NYCHA has adopted its Tenant Selection and Assignment Plan (“TSAP”) to ensure it processes application for public housing in accordance with applicable law. See Verified Answer, Exhibit 1. The TSAP, approved by HUD in 2000, establishes priority codes whereby certain applications, such as disabled individuals and victims of domestic violence, are accorded priority status. However, consistent with its obligations under federal law, NYCHA provides certain exceptions to its TSAP.

Of relevance here, is an exception that applies based on the request of tenant of record that an individual be added as a permanent member of their household. See NYCHA Management Manual, Chapter on Occupancy, subsection on Changes in Family Composition, Verified Answer, Exhibit 2. To add a tenant under this exception, the tenant of record, must make a written request to the development manager, and receive written permission in response to such request. Id. at 6, ¶ 4. This requirement applies to any person who would like to take residence in the tenant’s apartment, unless the person was an original tenant and never left the household or was born or adopted into the household, and is consistent with federal regulations. See *McFarlane v. New York City Housing Authority*, 9 AD3d 289 (1st Dept 2004)(noting that under applicable HUD regulations “[t]he family must request Housing Authority approval to add another family member as an occupant of the unit” citing 24 CFR 966.w4[a][1][v]).¹

A second exception allows a remaining family member to take over a former tenant’s

¹Management provides permission request forms to tenants who wish to add additional persons to their household. NYCHA also reminds tenants of this written-consent requirement annually upon submission of affidavits of income and a family composition form.

lease if that tenant moves or dies. See NYCHA Manual, chapter on Termination of Tenancy, Verified Answer, Exhibit 4. An occupant who wishes to succeed to the lease of a tenant of record as a remaining family member must (1) have moved into the apartment lawfully, (2) fall within certain categories of relative of the tenant of record, (3) have remained in the apartment continuously for at least one year before the tenant of record vacates the apartment or dies, and (4) be otherwise eligible for public housing in accordance with the admissions standards for applicants. Id., at E.1.; New York City Housing Authority Occupancy and Remaining Family Member Revisions, Verified Answer, Exhibit at 5, section B.

In this case, petitioner testified that he resided with Cabassa in the apartment from 1984 to 1986, but admits that he moved out of the apartment and only returned right before Cabassa's death. Therefore, petitioner was required to have received written consent from the management in order to be added as a tenant in the apartment. However, the record shows that neither petitioner, nor Cabasse obtained written permission to add a petitioner to the household, and that NYCHA had no record or knowledge that petitioner was staying in Cabassa's apartment. Furthermore, Cabassa never reported petitioner's income on her annual affidavits of income for period he resided with her, even though he contributed to the household income, and she was required to do so under her lease.

Thus, there exists a rational basis for NYCHA finding that petitioner did not obtain written permission to be added as a tenant, and that petitioner was not a lawful member of Cabassa's household and did not qualify as a remaining family member. Accordingly, there is no basis for disturbing NYCHA's determination denying petitioner claim for succession rights to Cabassa's apartment. See Jamison v. New York City Housing Authority, 25 AD3d 501, 502 (1st Dept 2006)(holding that "[p]etitioner does not qualify as a remaining family member because

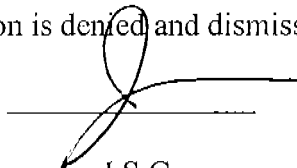
she did not enter the apartment lawfully [as] [r]espondent never gave the tenant of record written permission for petitioner to join the household, and petitioner admitted that no such permission was ever obtained from project management for her to reside in the subject apartment”).

Finally, nothing in the record indicates that NYCHA knew that petitioner resided in the apartment or implicitly approved his residency such that petitioner would not be required to obtain written approval to join the household. See Chavez v. New York City Housing Authority, 22 AD3d 408 (1st Dept 2005)(upholding that the denial of petitioner’s application for remaining family member status noting that “there was no basis for relieving petitioner of the written permission requirement, since she failed to establish that establish that the Housing Authority knew of and implicitly approved of her permanent residency in the apartment.”).

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and dismissed.

DATED: August 7, 2007



J.S.C.

UNFILED JUDGMENT

his 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 Desk (Room 41B).