

<b>Matter of Pelaez v New York City Hous. Auth.</b>
2007 NY Slip Op 32541(U)
August 3, 2007
Supreme Court, New York County
Docket Number: 0100839/2007
Judge: Leland G. DeGrasse
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**HON. LELAND DEGRASSE**

PRESENT:

PART 25

Index Number : 100839/2007

PELAEZ, MAYA

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. 100839/07

MOTION DATE 3/22/07

MOTION SEQ. NO. 001

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

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION.**

**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  
1450).

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

Dated: AUG 03 2007

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK : I.A.S. PART 25

----- X  
In the Matter of the Application of :  
MAYA PELAEZ : Index No. 100839/07  
 :  
Petitioner, : Cal. No.: 70 of 3/22/07  
 :  
 :  
- against - :  
 :

THE NEW YORK CITY HOUSING AUTHORITY  
Respondent.

----- X  
DeGRASSE, J.:

**UNFILED JUDGMENT**  
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Petitioner, Maya Pelaez, appearing *pro se*, seeks a judgment pursuant to CPLR Article 78, reversing and annulling the determination of respondent the New York City Housing Authority ("NYCHA"), dated October 25, 2006, which confirmed the dismissal of petitioner's grievance application for succession rights to Apartment 7G at the Wise Towers Houses, 74 West 92<sup>nd</sup> Street, New York, New York, a low-income public housing development, owned and operated by NYCHA.

Petitioner's deceased mother, Debra Pelaez, was the tenant of record of the subject apartment. Following her mother's death on July 6, 2005, petitioner sought permission from the housing management office to succeed to the lease as a remaining family member. By decision dated September 14, 2005, the housing management's project manager denied petitioner's request and this decision was upheld by NYCHA's borough office. On September 26, 2006, petitioner was afforded a hearing of her grievance before an impartial hearing officer, and by decision dated October 4, 2006, the hearing officer dismissed petitioner's grievance application on the grounds that petitioner failed to show "that she was living with her mother for the required 12 months or that she had any

permission to return to the household.” By Determination of Status for Continued Occupancy, dated October 25, 2006, NYCHA confirmed the hearing officer’s decision and dismissed petitioner’s grievance application.

In January 2007, petitioner commenced the instant Article 78 proceeding challenging NYCHA’s determination. In support of the present motion, petitioner asserts that she moved out of the subject apartment in 1998 on a temporary basis to pursue her academic studies in Florida, and it was never her intention not to return to her primary residence. Petitioner further states that her mother knew about her intention to return to the household, but her mother’s untimely death in July 2005 prevented her from seeking permission from management for petitioner to rejoin the household. Petitioner also asserts that since her mother’s death, she has continued to pay the rent, which has been accepted by NYCHA.

It is well settled that the standard of review in an Article 78 proceeding is limited to an inquiry as to whether or not an administrative determination is arbitrary or capricious, and without a rational basis in the administrative record (*see Matter of Pell v Bd. of Educ.*, 34 NY2d 222 [1974]). The reviewing court “may not substitute its own judgment of the evidence for that of the administrative agency, but should review the whole record to determine whether there exists a rational basis to support the findings upon which the agency’s determination is predicated” (*Matter of Purdy v Kreisberg*, 47 NY2d 354, 358 [1979]). An agency’s interpretation of the statutes it administers, if not unreasonable or irrational, is entitled to deference (*Matter of Salvati v Eimicke*, 72 NY2d 784 [1988], *rearg denied* 73 NY2d 995 [1989]; *Matter of Nelson v Roberts*, 304 AD2d 20 [2003]). A rational or reasonable basis for an administrative agency determination exists if there is evidence in the record to support its conclusion (*Sewell v City of New York*, 182 AD2d 469 [1992],

[\* 4 ]  
*appeal denied*, 80 NY2d 756 [1992]). Unless the reviewing court finds that the agency acted in excess of its jurisdiction, in violation of a lawful procedure, arbitrarily, or in abuse of its discretion, the court has no alternative but to confirm the agency's decision (*see Pell*, 34 NY2d at 231).

In accordance with federal requirements which it is required to comply with in order to obtain federal funding, NYCHA has promulgated guidelines and criteria for determining who is eligible to reside in the low-income, public housing apartments it administers. Of particular relevance to this proceeding are the guidelines set forth in NYCHA's Management Manual governing who is entitled to succeed to the tenancy of the apartment when the tenant of record moves or dies. According to NYCHA's one-year rule, original family members seeking succession rights to the tenant of record's household composition who move out and later seek to rejoin the household may be eligible for succession rights to the tenant's apartment. To obtain succession rights, original family members must have received prior written permission from the housing manager to permanently rejoin the household and thereafter, have remained in continuous occupancy "i.e., on all [o]ccupants' [a]ffidavit of [i]ncome from the date of issuance of written permission for permanent occupancy from the [h]ousing [m]anager for not less than one year immediately prior to the date the tenant of record vacates the apartment or dies" (NYCHA Occupancy and Remaining Family Member Policy Revisions, IV [B], GM-3692 amended as of July 11, 2003; *Matter of Torres v The New York City Hous. Auth.*, 40 AD3d 328 [2007]).

The record indicates that at her administrative hearing on September 26, 2006, petitioner testified that she moved into the subject apartment when she was a toddler. In 1998, she moved out of the apartment to attend Barry University in Miami Shores, Florida. Petitioner returned to the apartment during breaks from school, but did not "technically" rejoin the household, because her

mother passed away before she had a chance to request permission to add petitioner to the lease. Petitioner further testified that when her mother passed away on July 6, 2005, petitioner was living in Florida and had only “recently” given up her Florida residence, because she did not want to break her lease.

Additionally, the record shows that by letter dated June 23, 2004, petitioner’s mother requested that the housing management remove petitioner from the family composition stating that “[petitioner] lives in Florida for now.” As proof that petitioner was no longer living at the subject apartment, petitioner’s mother submitted a telephone statement indicating that petitioner was residing at a Florida address. The record further shows that petitioner was not listed on the affidavits of income executed by petitioner’s mother on May 16, 2004 and May 2, 2005.

The court finds that there was a rational basis for NYCHA’s determination that petitioner was not entitled to remaining family member status. The uncontroverted evidence establishes that petitioner did not reside in continuance occupancy with her mother for one year prior to her death, nor did petitioner obtain management’s permission to rejoin the household. Insofar as petitioner failed to satisfy the one-year rule requirement for remaining family member status set forth in NYCHA’s Management Manual, her application must be dismissed (*see Torres*, 40 AD3d at 328).

In making her plea for relief petitioner submits various documents which include: a petition and affidavits of support from residents in the community; proof of voter registration; rent statements; and letters that petitioner wrote to NYCHA requesting, *inter alia*, that she be allowed to succeed to the tenancy of the subject apartment as a remaining family member. This court may not consider petitioner’s submissions in determining whether the administrative determination under review has a rational basis. “Disposition of the proceeding is limited to the facts and record adduced

before the agency when the administrative determination was rendered” (*Matter of Fanelli v New York City Conciliation and Appeals Bd.*, 90 AD2d 756, 757 [1982], *affd* 58 NY2d 952 [1983]). Moreover, even if the court were to consider the submitted documents, said documents fail to show that petitioner satisfied the one-year occupancy requirement for remaining family member status set forth in NYCHA’s Management Manual.

Additionally, petitioner's assertion that she has been paying rent while residing in the apartment does not constitute a waiver. The rental payments made by petitioner merely fulfill NYCHA’s requirement that a grievance claimant must “[c]ontinue to pay use and occupancy for the subject apartment . . . prior to and during the pendency of the grievance” (NYCHA Mgt. Manual, ch. VII, subdiv. IV, [E] [1] [c] [2]; *see also Kolarick v Franco*, 240 AD2d 204 [1997]).

Based on the foregoing, the court concludes that the determination by NYCHA was neither arbitrary nor capricious.

Accordingly, petitioner’s application is denied and the instant petition is dismissed.

This constitutes the decision, order and judgment of the court.

Dated:

AUG 3 2007



J.S.C.

**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 141B).