

Matter of Daye-Fludd v Rochdale Vil., Inc.

2007 NY Slip Op 32551(U)

August 3, 2007

Supreme Court, New York County

Docket Number: 0118998/2006

Judge: Leland G. DeGrasse

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

PRESENT: HON. LELAND DEGRASSE

PART 25

Justice

Index Number : 118998/2006

FLUDD, MAMIE E. DAYE

vs

ROCHDALE VILLAGE INC

Sequence Number : 001

ARTICLE 78

INDEX NO. 118998/06
~~118988/06~~

MOTION DATE 3/12/07

MOTION SEQ. NO. 001

MOTION CAL. NO. 35

this 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

**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 141B).

AUG 03 2007

Dated: _____

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

----- X
In the Matter of the Application of :
MAMIE DAYE-FLUDD : Index No. 118998/06
 :
Petitioner, : Cal. No.: 35 of 3/12/07
 :

- against -

ROCHDALE VILLAGE, INC.
169-65 137TH Ave.
JAMAICA, N.Y. 11434

NEW YORK STATE DIVISION OF HOUSING & :
COMMUNITY RENEWAL :

Respondents.

----- X
DeGRASSE, J.:

UNFILED JUDGMENT
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Petitioner Mamie Daye-Fludd, appearing *pro se*, brings this Article 78 proceeding to reverse and annul an Order Denying Appeal, dated October 24, 2006, pursuant to which respondent the New York State Division of Housing & Community Renewal ("DHCR"), determined that petitioner had not established succession rights to Apartment 13 D at 134-39 166 Place, Jamaica, New York, a Mitchell-Lama housing development owned by respondent Rochdale Village, Inc. ("Rochdale"), a limited-profit housing company organized under Article II of the Private Housing Finance Law of the State of New York (also known as the Mitchell-Lama Law), which is supervised by DHCR.

Petitioner's husband, James Fludd, was the tenant of record of the subject apartment until his death on November 22, 2005. Following her husband's death, petitioner requested succession rights to the apartment. By letter dated June 7, 2006, Rochdale denied petitioner's request on the ground

that petitioner was not listed as a resident on her husband's income affidavits for the requisite two-year period immediately preceding his death, as required under DHCR's succession regulations. By undated letter received by DHCR on June 23, 2006, petitioner appealed the denial of her application.

To substantiate her claim of co-occupancy in the subject apartment for the required two-year period, petitioner submitted her marriage certificate dated July 15, 2002; an annual social security benefit statement dated July 12, 2000; wage and tax statements for tax years 2001 through 2005; bank and retirement account statements dating from June 30, 2002; union dues receipts dating from October 11, 2002; and earnings statements dating from December 26, 2002. All of these documents identified the apartment as petitioner's address. Additionally, in an undated letter received by DHCR on September 13, 2006, petitioner informed DHCR that she had not been included on her husband's income affidavits for the requisite two-year period because in 2003, he applied for the SCRIE program, a reduced rent program for residents over age 65, and was told by the housing management that if anyone else lived in the apartment with him, he would not be eligible for the program.

In an Order Denying Appeal, dated October 24, 2006, DHCR's Deputy Commissioner denied petitioner's appeal finding that petitioner did not qualify for succession rights to the apartment because she had not been included in her husband's income affidavits for the two years immediately preceding his death as required by DHCR's succession regulations for state-aided Mitchell-Lama housing. Specifically, in denying petitioner's appeal the Deputy Commissioner stated, in pertinent part:

“The Social Security Death Index shows that the Tenant died November 22, 2005. Therefore, the two-year qualification period for the Applicant to obtain succession rights to the Apartment’s tenancy began November 22, 2003. The Apartment’s income affidavits for calendar years 2000 and 2001 listed the Applicant as an occupant of the Apartment. However, the Apartment’s income affidavit for calendar year 2002 [which the Tenant executed on March 17, 2004] listed the Tenant as the Apartment’s sole occupant. In effect, that income affidavit informed [Rochdale] and was a written notice that the Applicant no longer occupied the Apartment. After that, the Apartment’s income affidavits for calendar years 2003 and 2004 similarly listed the Tenant as the Apartment’s sole occupant. Accordingly, the Applicant’s name did not appear on any of the Apartment’s annual income affidavits during any part of the applicable two-year qualification period[s].

“As a result, the Applicant cannot obtain succession rights to the Apartment under the DHCR’s Regulations for State-aided, Mitchell-Lama housing projects. ... To permit succession under such circumstances would invite fraudulent claims.”

With respect to petitioner’s claim that her husband did not list her on his income affidavits because he wanted to qualify for the SCRIE reduced rent program for senior citizens, the Deputy Commissioner found that:

“In her reply, the Applicant asserted that the Tenant had listed himself as the Apartment’s sole occupant because he had been told that he would lose his eligibility for the SCRIE program if anyone else lived in the Apartment. However, the Applicant’s assertion does not alter the fact that the Tenant [who had previously listed the Applicant] removed her name from the income affidavits and specifically listed himself as the Apartment’s only occupant. The Applicant’s acknowledgment that the Tenant took that action to obtain benefits under the SCRIE program does not change the fact that the Applicant’s name does not appear on the Apartment’s income affidavits covering the applicable qualification period.”

As to petitioner’s submissions in support of her proof of residency for the applicable two-year period, the Deputy Commissioner found that:

“Those items list the Applicant’s name and the Apartment’s address. However, they are not sufficient to overcome the Tenant’s failure to list the Applicant’s name on any of the Apartment’s income affidavits covering the two-year qualification period.”

In January 2007, petitioner commenced the instant Article 78 proceeding challenging DHCR's determination. In support of the present motion, petitioner asserts that she should be granted succession rights to the subject apartment as a remaining family member, because she moved into the apartment at the inception of her husband's tenancy and continuously lived there with him until his death.

In opposition, DHCR argues that since petitioner was not listed as an occupant of the apartment on the income affidavits submitted by her husband during the two-year period immediately prior to his death, the Deputy Commissioner properly concluded that petitioner did not meet the regulatory requirements to obtain a lease in her own name as a successor tenant. DHCR further argues that petitioner and her husband made a determination to list him as the sole occupant of the apartment on the last three income affidavits preceding his death, "though, at least, petitioner continued her employment, receiving earned income." As such, DHCR claims that "issuing a lease to petitioner would be tantamount to condoning the evasion of the income-reporting requirements."

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], *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).

Under DHCR succession rights regulations, specifically 9 NYCRR § 1727-8.3 (a), applicants seeking leases in their own name as successors to a Mitchell-Lama apartment are required to make a three-part showing that: (1) they are members of the tenant's family, as defined in 9 NYCRR § 1727-8.2 (a) (2); (2) they have resided with the tenant in the housing accommodation as their primary residence for not less than two years (one year if disabled or a senior citizen); and (3) they have been listed on the tenant's annual income affidavit and/or Notice of Change to Tenant's Family. The language of 9 NYCRR § 1727-8.3 (a) is mandatory, and, therefore, all three requirements must be met by an applicant requesting to be named on the lease as successor to the former tenant.

To satisfy the second element of the statute, that the apartment was the applicant's primary residence for the prescribed period of time, the applicant must submit certain proof, which shall include "the listing of such person on the annual income affidavit and/or the filing of the Notice of Change to Tenant's Family ... together with other evidence such as certified copies of tax returns, voting records, motor vehicle registration and driver's license, school registration, bank accounts, employment records, insurance policies and/or other pertinent documentation or facts" (9 NYCRR § 1727-8.2 [a] [5]). Thus, as petitioner has not made the necessary showing that she was listed on her husband's income affidavits for the two years immediately preceding his death, she is not entitled to succeed to the tenancy of the subject Mitchell-Lama apartment (*see Matter of Greichel v New*

York State Div. of Hous. and Community Renewal, 39 AD2d 421 [2007]; *Matter of Johnson v State of New York Div. of Hous. and Community Renewal*, 213 AD3d 345 [1995]; *Matter of Gee v New York State Div. of Hous. and Community Renewal*, 276 AD2d 444 [2000]).

The court finds that DHCR gave full and fair consideration to all of the issues raised by petitioner and came to a rational determination.

Accordingly, the application is denied and the petition is dismissed. The foregoing constitutes the decision and judgment of the court.



DATED: AUG 03 2007

J.S.C.

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