

<b>Matter of Shekhem'El-Bey v New York City Hous. Auth.</b>
2007 NY Slip Op 33184(U)
September 5, 2007
Supreme Court, New York County
Docket Number: 0108142/2007
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT:

PART \_\_\_\_\_

Justice

Index Number : 108142/2007

**SHEKHEM EL-BEY, YASHUN A.**

vs.

**HOUSING AUTHORITY**

SEQUENCE NUMBER : # 002

DEFAULT JUDGMENT

INDEX NO. 108142-07

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

MOTION SEQ. NO. #002

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

Here read on 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 <sup>Cross</sup> motion <sup>for default judgment</sup> is <sup>denied</sup> <sup>Respondent</sup> is not in default under applicable CPLR rules

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

**FILED**  
OCT - 4 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 22 Aug '07

Chris Pantalone  
J.S.C.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50

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In the Matter of the Application of	:
YOSHUA AMEN SHEKHEM'EL-BEY,	:
	:
Petitioner,	DECISION AND ORDER
	:
For an Order Pursuant to Article 78 of	:
the Civil Practice Law and Rules	INDEX NUMBER
	108142/07
- against-	:
	:
NEW YORK CITY HOUSING AUTHORITY,	:
Bronx River Houses,	:
	:
Respondent.	:
----- X	

Hon. Lewis Bart Stone:

This proceeding was commenced by Notice of Petition, dated June 9, 2007, by Petitioner Yoshua Amen Shekhem'El-Bey pro se, pursuant to Civil Practice Law and Rules ("CPLR") Article 78, to set aside a report of a hearing examiner of Respondent, New York City Housing Authority ("NYCHA") dated February 23, 2007, (the "Report") which report rejected Petitioner's Grievance by which Petitioner sought to be designated a remaining family member as to Apartment 2C, 1044 Boynton Avenue, Bronx, New York (the "Apartment").

The decision of NYCHA relevant to this proceeding is its decision of March 14, 2007 (the "Decision") which confirmed the Report. As an Article 78 proceeding

NYCHA

to review a decision of a body must first permit the administrative process to be completed, this Court may only review the Decision. As a practical matter, as the Decision expressly recites that it is “in compliance with” the Report, this Court would, in reviewing the Decision, have to review such Report as it was incorporated by reference in the Decision, if the Petitioner had a made proper pleading in this proceeding. However, as the Petitioner is pro se, this Court will not dismiss the petition for this error and will consider the petition as if Petitioner had in fact sought to set aside the Decision. (See CPLR §2001).

NYCHA owns and operates over 100,000 deeply subsidized low rent apartments in New York City. As these apartments are generally well maintained and have below market rents, they are highly desirable and NYCHA, at present, has a waiting list for apartments of over 135,000 names. To mediate fairly between families of tenants already in NYCHA apartments and those on the waiting list for apartments vacated by an existing tenant, NYCHA has issued and enforces a series of regulations to determine whether a vacated apartment is to be rented to the next eligible person on the waiting list, or to someone claiming tenancy through the prior tenant. NYCHA conducts hearings to resolve disputes under these regulations.

Here, Petitioner’s aunt, Sarah Jenkins (“Jenkins”), was the long term tenant of the one bedroom Apartment. Jenkins entered a nursing home in December 2004 and

died there on October 15, 2006.<sup>1</sup> Petitioner sought rights to the Apartment as a remaining family member and commenced this proceeding to challenge NYCHA's determination that he did not have such rights.

NYCHA sets regulations under powers granted to it under Federal and State law, to determine if an applicant may qualify as a remaining family member to take over a NYCHA apartment when the tenant vacates. NYCHA must, under Federal law, follow its own regulations and regularly certify to the United States Department of Housing and Urban Development that it has done so. These regulations define the familial relationship necessary to qualify a person as a remaining family member. Another regulation defines who may live in a NYCHA apartment. The express prior written approval of NYCHA is required for one who is not an actual tenant or a child born to or adopted by an original tenant or a spouse to become an occupant of an apartment. Further, to assure that ineligible persons do not misappropriate subsidized housing, an annual certification of all persons residing in an NYCHA apartment and their income is required. Finally, to avoid crowding, NYCHA maintains rules to limit the number of persons who can occupy an apartment.

Under the regulations, a nephew of a tenant of record such as Petitioner is not entitled to remaining-family-member status, unless originally on the lease or

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<sup>1</sup> Jenkins' January 2003 lease set rent for the Apartment at \$143.00 per month.

approved to move into the Apartment. Similarly, a person moving into an apartment without prior written permission, after the lease is signed, (other than certain children or spouses) does not get occupancy or tenant status. Finally, one who has not been included in the annual tenancy and income certification may presumptively be deemed not to have been residing in an apartment.

Not only did Petitioner fail all of these tests, but further, NYCHA could not have granted Petitioner any right to move in to the Apartment with his aunt, as the Apartment was too small.

Thus, as several independent grounds support the Decision, it was not arbitrary nor capricious.

Petitioner also challenges NYCHA's exclusion of "nephews" from the list of family members who could be considered a remaining family member, claiming that a nephew could qualify under the Rent Stabilization Laws ("RSL") to be a successor tenant of a rent stabilized apartment. This challenge cannot be sustained. The RSL, by its own terms does not apply to NYCHA units. 9 NYCRR §2520.11(b). Thus the applicable standard is the NYCHA rule, and Petitioner cannot meet such standard.

Petitioner, acting pro se, has also set forth a long litany of alleged violations of due process of NYCHA at the hearing and in determining his Grievance, misciting and misunderstanding rules applicable to administrative hearings. Among these

complaints are that the hearing officer and the attorney representing NYCHA are NYCHA employees. It is the inherent to the administrative process that employees of an administrative agency hear and determine matters before the agency, subject only to court oversight through CPLR Article 78, the very process which is now occurring. Petitioner also complains that the NYCHA attorney did not represent his interest. Thus, he misunderstands that the attorney for NYCHA is its advocate and that having elected to proceed pro se, Petitioner must be his own advocate. Allegations of fraud are also made but the petition sets forth no specifics or evidence thereof. While Article 78 may permit a court to review a decision improperly made by reason of fraud or misconduct on the grounds that such misconduct is evidence of an arbitrary or capricious decision, an allegation of fraud must be specifically identified to allow a court to consider any such an allegation. The petition is insufficient for this purpose. Petitioner further claims violations of discovery provisions of CPLR and implies that NYCHA had an affirmative obligation to disclose material that Petitioner had not timely sought. Initially, this Court notes that CPLR provisions relating to discovery apply to court proceedings and not to administrative proceedings. Secondly, an obligation to disclose through the discovery process in a civil, as distinct from a criminal, proceeding only arises when proper demand or request for discovery was made. Finally, Petitioner's complaint

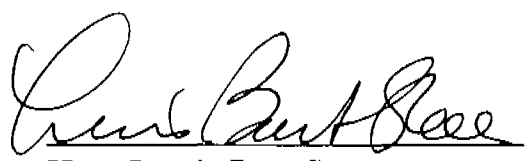
that NYCHA did not disclose its rules is not a basis for objection is not supported by the record which illustrates that, because of Petitioner's pro se status, care was taken to apprise him of relevant rules.

As part of the motion practice in the Article 78 proceeding, on July 21, 24 and 27, Petitioner also made motions and amended motions claiming that NYCHA has defaulted in responding to his petition in a timely manner. By Decision and Order dated August 22, 2007, and by this Order, this Court rejects Petitioner's motions for a default judgment. NYCHA's papers were filed within the time permitted therefore under the CPLR.

The Petition and Petitioner's motion for a default judgment are denied.

This is the Decision and Order of the Court.

DATED: SEPTEMBER 5, 2007  
NEW YORK, NEW YORK

  
Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
OCT - 4 2007  
NEW YORK  
COUNTY CLERK'S OFFICE