

**Matter of Williams v New York State Div. of
Hous. & Community Renewal**

2007 NY Slip Op 33752(U)

November 16, 2007

Supreme Court, New York County

Docket Number: 0105655/2007

Judge: Herman Cahn

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: Cahn
Justice

PART 49

Williams
- v -
NYS Div. of Housing

INDEX NO. PS655/07
MOTION DATE 7/6/07
MOTION SEQ. NO. 81
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for Part 28

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

FILED
NOV 21 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

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

Dated: 11/16/07 Alan Cahn
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: IAS PART 49

-----X

In the Matter of the Application of

GWENDOLYN WILLIAMS,

Petitioner,

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

Index No. 105656/07

-against-

THE NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL, and SOUTHBRIDGE
TOWERS, INC.,

Respondents.

-----X

HERMAN CAHN, J.:

Petitioner Gwendolyn Williams (Williams) brings this Article 78 proceeding to nullify orders, dated October 2, 2002, May 19, 2005 and January 2, 2007, of the New York State Division of Housing and Community renewal (DHCR) and to stay the landlord's holdover proceeding in Housing Court. This court signed a temporary restraining order staying further proceedings in the holdover proceeding in the Civil Court of the City of New York, County of New York, entitled *Southbridge Towers, Inc. v Williams*, L&T 83445/05.

Respondent DHCR cross-moves, pursuant to CPLR 3211 and 7804, to dismiss the petition.

FACTS

This proceeding challenges the determination of the DHCR, which affirmed the decision of respondent Southbridge Towers, Inc. (Southbridge) denying Williams' request for succession rights to apartment 24K in its project. Southbridge is a project that is subject to the Private Housing Finance Law and its implementing regulations, commonly known as a Mitchell-Lama project.

The tenant of record of apartment 24K was Joseph Tucker, Sr. His son, Joseph Tucker, Jr. (Tucker), resided with him. After his father's death on April 24, 1999, Tucker sought succession rights to the apartment. The housing company denied his claim by letter dated January 3, 2002. The denial was upheld on appeal to DHCR by order dated October 2, 2002. Williams contends that Tucker was never informed of the denial, and thought that the matter was still undecided. The housing company did not pursue eviction proceedings against Tucker. Tucker submitted an income affidavit for calendar year 2000, in which he certified that he and his nephew, Bryan Strothers, occupied the apartment. Tucker listed himself as the sole resident for calendar years 2001 through 2003.

Tucker died on September 12, 2004. Subsequently, Williams sought succession rights to the apartment. The housing company denied the claim by letter dated November 5, 2004, on the ground that she had failed to submit documentation substantiating the regulatory requirements that she: (1) had emotional and financial interdependence with the tenant of record; and (2) resided in the apartment with the tenant of record as her primary residence for the applicable two-year time period. The housing company held that Williams could not obtain succession rights through Tucker because he had been denied such rights and was, therefore, an unauthorized

resident of the apartment at the time of his death.

Williams appealed the housing company's decision in a letter dated December 7, 2004. She included various anecdotes demonstrating the emotional and financial interdependence between herself and Tucker, and contended that she was disabled and that, therefore, the applicable occupancy period was one year, rather than two years.

The housing company answered Williams' appeal by letter dated December 29, 2004. The housing company enclosed income affidavits for calendar years 2002 and 2003, and stated that Williams was not entitled to succession rights because she was not named as an occupant on the affidavits.

By order dated May 19, 2005, DHCR denied Williams' appeal, and Williams commenced an Article 78 proceeding. That proceeding resulted in an order dated May 2, 2006, vacating DHCR's decision and remanding the matter to the agency for further determination. According to Williams, at oral argument on the prior Article 78 petition, counsel informed the court that he had just discovered, the day before oral argument, that two high officials of DHCR residing at Southbridge, at least one of whom was a member of the Southbridge board of directors, had just been arrested for corruption at Southbridge, dealing with manipulation of apartments. The two officials have since been convicted, but counsel suggests that they might have still been employed by DHCR as late as Thanksgiving 2006, while the appeal on remand was under consideration. Counsel expressed concern about what influence those officials might have had on the determinations regarding the Tucker apartment.

The Attorney General sought a remand of the earlier proceeding, to which petitioner consented, and which Southbridge opposed. The matter was remanded, but none of the issues

regarding the two DHCR officials was addressed in the subsequent order. Petitioner argues that the remand was a charade and, in this petition, seeks review of the October 2, 2002 order that denied Tucker's appeal. Williams presents evidence that not only did neither Tucker nor his attorney ever receive that order, but the landlord's attorney and the housing company also never received it during Tucker's lifetime. Consequently, petitioner maintains that it should be subject to review at this time.

Williams contends that she moved into the apartment because she was, and remains, seriously disabled. She first met Tucker in 1996. They became close and shared in many activities with family and friends. In December 2001, Williams suffered a stroke. Tucker wanted to care for her, and asked her to come live with him. She moved in with Tucker in the winter of 2002. When he could not care for her after she had major surgery, his mother assisted her. In late spring 2004, Tucker's health failed and Williams became his caretaker. Williams was named as Tucker's executrix and Tucker left her his residual estate. Williams states that Tucker was fighting with the co-op for a lease and had retained a lawyer for an appeal.

Williams' health has continued to deteriorate. She now suffers from stage five renal failure, undergoes dialysis and is awaiting a kidney transplant. She has been paying use and occupancy on the apartment at issue. There is some disagreement about whether she has been paying the full amount that was attributable to the apartment, in large part because of the attorneys' fees that Southbridge has added to her bill, but which she contends are improper.

DISCUSSION

This matter has been in the courts for some time and the history regarding the apartment is somewhat troubling. While it seems clear that Tucker never obtained succession rights to the

apartment, it also appears that he was never informed of that denial, nor were his lawyer or the landlord. As a result, he was denied the opportunity to review and address the determination of his appeal. The fact that there were two officials from DHCR at Southbridge, who were later convicted of charges relating to their role regarding apartments in the complex, raises questions as to whether Tucker's application was handled properly. If there were any impropriety, such impropriety may have had an effect on Williams' position in the apartment and her subsequent attempt to gain succession rights. Unfortunately, since Tucker has died, there is no way of knowing what informal communications may have taken place during this time period. Nonetheless, Williams' request that the denial of Tucker's application for succession rights be subject to review appears to merit consideration, since he was never informed of the decision.

The regulations regarding succession rights in a Mitchell-Lama development provide:

Any other person residing with the tenant in the housing accommodation as a primary or principal residence, who can prove emotional and financial commitment and interdependence between such person and the tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant for the housing accommodation and other evidence which may include, without limitation, the following factors:

- (a) longevity of the relationship;
- (b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- (c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
- (d) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their works or actions;

(g) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services; and

(h) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship. In no event would evidence of a sexual relationship between such persons be required or considered.

9 NYCRR 1727-8.2 (a) (2) (ii). Williams has provided evidence of many of the enumerated factors.

While it is true that Williams was not listed on the income affidavit, the regulation provides explicitly that no single factor is to be considered determinative. Here, it appears that Williams' failure to be included on the income affidavit was considered determinative, despite the regulation rejecting such an exclusive basis. It also appears that DHCR failed to note that Williams is disabled due to her severe illness and, as a result, need demonstrate only one year occupancy of the apartment. If, upon reconsideration, it is determined that Tucker was entitled to succession rights, Williams should be considered for succession rights based upon the one-year requirement rather than the two-year time frame that would otherwise apply.

CONCLUSION

Accordingly, it is hereby

ORDERED that the petition is granted and the matter is remanded to the New York State

Division of Housing and Community Renewal for reconsideration of the determination dated October 22, 2002, which denied succession rights to Joseph Tucker, Jr., and, after reviewing that determination, reviewing the determination dated January 7, 2006, which denied succession rights to petitioner Gwendolyn Williams; and it is further

ORDERED that the cross-motion to dismiss the petition is denied; and it is further

ORDERED that the stay of further proceedings in the action *Southbridge Towers, Inc. v Williams*, L&T 83445/05, in the Civil Court of the City of New York, County of New York, is to continue pending final resolution of the matters under review in this proceeding.

Dated: November 16, 2007

FILED
ENTER: NOV 21 2007
NEW YORK
COUNTY CLERK'S OFFICE

J.S.C.