

<b>Matter of Serrano v New York City Hous. Auth.</b>
2008 NY Slip Op 31149(U)
April 17, 2008
Supreme Court, New York County
Docket Number: 0103062/2008
Judge: Lewis Bart Stone
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: STONE  
**HON. LEWIS BART STONE** Justice

PART 505

VICTOR SEMANO  
- v -  
NYCHA

INDEX NO. 103062/08  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were 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 motion  
*is decided per attached  
Decision & Order*

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

**FILED**  
APR 22 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 17 April 2008 *Lewis Bart Stone*  
**HON. LEWIS BART STONE** 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 50S

----- X  
In the Matter of the Application of :  
VICTOR SERRANO : DECISION AND  
Petitioner, : ORDER  
For an Order Pursuant to Article 78 of :  
the Civil Practice Law and Rules : INDEX NUMBER  
- against- : 103062/06  
NEW YORK CITY HOUSING AUTHORITY :  
Respondent. :  
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**FILED**  
APR 22 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Hon. Lewis Bart Stone:

This proceeding was commenced by Petitioner, Victor Serrano ("Serrano") by Order to Show Cause issued by this Court on February 28, 2008, pursuant to Civil Practice Law and Rules ("CPLR") Article 78, against the New York City Housing Authority ("NYCHA") to vacate a determination of NYCHA dated November 8, 2007 (the "Decision"), which denied Serrano's grievance that he was wrongfully denied a lease to his mother's apartment as a remaining family member.

Serrano's mother, Isabel, resided in apartment 9G at 50 East 102<sup>nd</sup> Street in Manhattan (the "Apartment") from January 1973 until her death on August 10, 2007. The Apartment is in a building owned by NYCHA and accordingly, its occupancy is subject to the rights, rules and regulations of NYCHA. Serrano moved into the  
NYCHA

apartment with his mother in 1973, but left about two years later when he relocated to Puerto Rico. Serrano claims he later returned to the apartment but gave different dates as to when he returned. In a hearing he indicated he was in Puerto Rico for ten years and in his letter to NYCHA of March 27, 2007, he stated he had been residing in the apartment since June 1997. The records of NYCHA have not shown Serrano to have been a resident after 1975 and annual income statements filed by Isabel after that date do not include Serrano as a household member or disclose his income, notwithstanding that Serrano acknowledged receiving Social Security retirement payments. It was only after his mother's death that Serrano claimed succession rights. Serrano was thereafter accorded the full grievance procedure and a hearing, eventually resulting in the Decision.

Serrano's grounds for relief are disjointed. However, as Serrano is pro se, this Court will read his petition in the most favorable light to Serrano as the text permits. Serrano seems to advance two general grounds. One is that he did not waive his rights to counsel and was also unaware of NYCHA rules and regulations at the hearing. The second ground that the Apartment was his "ancestral home," to which he has strong ties and that denying him the Apartment would violate the purposes of public housing and constitute a hardship.

Serrano's claims as to lack of counsel and lack of awareness of the rules at the hearing is without merit. On June 27, 2007, NYCHA gave Serrano written notice of the hearing and advised Serrano that he could bring counsel to the hearing and further advised how Serrano could find pro bono counsel if he could not afford private counsel. The notice also enclosed copies of the NYCHA procedural rules and NYCHA rules and regulations relating to remaining family members and eligibility. As the Notice set the time and place of the hearing, and as Serrano attended the hearing without protest it is clear he had received the Notice. At the hearing, Serrano advised he was proceeding pro se, and so proceeded.

NYCHA has a comprehensive set of rules to ascertain who may live in its apartments and who may succeed to tenancies. These rules are necessary to balance the interests of persons on waiting lists for these desirable apartments and the interests of current residents to pass on their beneficial leases to family members. As Serrano does not challenge these rules, they control this proceeding. Under such of those rules applicable here, Serrano could only reside in the Apartment or be added to the lease upon the prior written approval of NYCHA. Succession to the status of a tenant under the rules is limited to persons who have legally resided with a tenant in an apartment for a certain period, and who meet certain other criteria. Here, NYCHA asserts that, Serrano, having not been given prior written authorization to

move in, was not living in the Apartment under such authorization when his mother died in August 2007.

In Jamison v. NYCHA, 25 AD3d 501, (1<sup>st</sup> Dept. 2006), the First Department addressed the issue of whether one who moved into a NYCHA apartment without prior approval may seek succession rights as a remaining family member as follows:

“The challenged administrative determination, which denied petitioner’s application for “remaining family member” status on the ground that written permission had not been obtained for her occupancy in the apartment, is neither arbitrary nor capricious. (See Matter of McFarlane v. New York City Hous. Auth., 9 AD3d 289 [2004] ; Matter of Abdil v. Martinez, 307 AD2d 238 [2003]. Petitioner does not qualify as a remaining family member because she did not enter the apartment lawfully. Respondent never gave the tenant of record written permission for petitioner to join his household, and petitioner admitted that no such permission was ever obtained from project management for her to reside in the subject apartment.” Id. at 502.

Residing in an NYCHA apartment itself illegally for a time does not mature into rights to take over an NYCHA apartment. See, e.g., Davis v. Franco, 270 AD2d 55 (1<sup>st</sup> Dept. 2000). Any other rule would award bad or illegal behavior and penalize those on the waiting list for acting properly.

\* 6 ]

As this procedure has been commenced under CPLR Art. 78, this Court need not independently determine whether Serrano is entitled to succession rights to the Apartment, it need only determine whether NYCHA was arbitrary and capricious in finding that he was not. Based on the facts found by NYCHA as recited above which formed the basis of their Decision (which facts are not seriously questioned), NYCHA was not arbitrary and capricious in rejecting all Serrano's claims to succession rights in the Apartment. Accordingly, the Petition must be dismissed.

The petition is dismissed.

This is the Decision and Order of the Court.

DATED: APRIL 17, 2008  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court

**FILED**  
APR 22 2008  
COUNTY CLERK'S OFFICE  
NEW YORK