

Matter of Daniels v New York City Hous. Auth.
2008 NY Slip Op 32307(U)
August 14, 2008
Supreme Court, New York County
Docket Number: 0401018/2008
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Tolub
Justice

PART 15

Daniels

INDEX NO.

40018/08

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

- v -
NYCHA

The following papers, numbered 1 to _____ were read on this motion to/for Art 78

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

~~IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION~~

FILED

AUG 19 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/14/08

WALTER B. TOLUB 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 OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
In the Matter of the Application of
SHIRLEY E. DANIELS

Index No. 401018/08

Mtn. Seq. 001

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----x
WALTER B. TOLUB, J.:

FILED
AUG 19 2008
COUNTY CLERK'S OFFICE
NEW YORK

This is a motion by Petitioner seeking a reversal of the New York City Housing Authority's (NYCHA or Housing Authority) final determination dated April 9, 2008.

Facts

Petitioner seeks a reversal of NYCHA's determination denying her succession rights as a remaining family member to the apartment formally occupied by her mother, Millicent Daniels (Ms. Daniels).

NYCHA's records show that the Petitioner is an original family member who moved out of the household in 1969. Petitioner's mother became ill sometime in 2005, and required daily assistance. On March 13, 2006, Petitioner requested permission to return to the household and her request was approved on March 16, 2006. Ms. Daniel's died unexpectedly on September 26, 2006. On October 17, 2006, Petitioner went to the

management office and informed them of her mother's death. Management informed Petitioner of her right to request a remaining family member grievance.

By letter dated June 15, 2007, Petitioner requested to meet with the Housing Manager of Lincoln House regarding her remaining family member grievance. On June 26, 2007, Petitioner met with the Housing Manager who informed her that she was not entitled to remaining family status because she was not an authorized occupant of the apartment for more than one year prior to Ms. Daniel's death. The Housing Manager then forwarded the grievance to the District Officer for review.

The Housing Authority then sent Petitioner a letter giving her the opportunity to submit additional documentation about her claim or she could have a personal interview with someone in the District Office. Petitioner met with a representative from the District Office who, after reviewing the facts, upheld the Housing Manager's decision. Petitioner was then informed that she could request a formal hearing before a hearing officer.

In September 2007, the Housing Authority notified Petitioner that she had a grievance hearing scheduled for October 12, 2007 which was later adjourned to March 6, 2008. Petitioner appeared on March 6, 2008 *pro se*. At the hearing, Petitioner admitted that she did not satisfy the Housing Authority's requirement of residing at the apartment one year prior to Ms. Daniel's death

(Respondent Ex. V, p.20).

After a review of all the evidence, the Hearing Officer, by decision dated March 28, 2008, dismissed Petitioner's grievance and held that she is not a remaining family member as defined by NYCHA's regulations. By determination dated April 9, 2008, the Housing Authority's Board adopted the Hearing Officer's decision and dismissed Petitioner's remaining family member grievance.

Petitioner now seeks a reversal of NYCHA's final determination that she is not a remaining family member entitled to Ms. Daniel's apartment.

Discussion

The NYCHA decision to deny Petitioner's request for the apartment because she is unable to secure remaining family member status is consistent with the discretion it is afforded by law. The decision to deny Petitioner remaining family member status was based on uncontested evidence that Petitioner did not meet NYCHA's requirement of residing at the premises at least a year before Ms. Daniel's death.

An administrative's decision will withstand judicial scrutiny if it has a rational basis and is not arbitrary and capricious. (Pell v. Board of Edu., 34 NY2d 22, 231 [1974]). Where there is substantial evidence to support an administrative determination, that determination must be sustained by the

reviewing courts. (Silberfarb v. Board of Cooperative Edu. Services, 60 NY2d 979, 981 [1983]). The courts have defined substantial evidence to mean "such reasonable proof that a reasonable mind may accept as adequate to support a conclusion of ultimate fact" and that such evidence need not rise to the level of a preponderance of evidence, but must be more than seeming or imaginary. (300 Gramatan Avenue Assoc., 45 NY2d at 180 [1978]).

Remaining family member status must be determined according to the standards set by the Housing Authority (Henderson v. Popolizio, 76 NY2d 972 [1990]). Petitioner is not a remaining family member under controlling Housing Authority standards because she, admittedly, did not continuously occupy the apartment with the written-consent of development management for at least one year prior to Ms. Daniel's death (Respondent Ex. 2).

Although this court is sympathetic with Petitioner's situation, and although Petitioner claims she was not aware of the one year rule, the Housing Authority's determination was neither arbitrary or capricious and had a valid basis, and therefore the Petition must be and is dismissed.


Accordingly it is

ORDERED that the Petition is dismissed and the determination of the Housing Authority to not grant Petitioner remaining family

member status is confirmed.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 8/17/58


HON. WALTER B. TOLUB, J.S.C.

FILED
AUG 19 2008
COUNTY CLERK'S OFFICE
NEW YORK