

Matter of Guzman v Hernandez

2008 NY Slip Op 33062(U)

November 7, 2008

Supreme Court, New York County

Docket Number: 401144/08

Judge: Joan B. Lobis

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

PRESENT: HON. JOAN B. LOBIS
Justice

PART 6

GUZMAN, CRYSTAL,

Plaintiff(s),

- v -

HERNANDEZ, TINO,

Defendant(s).

INDEX NO. 401144/08

MOTION DATE 10/7/08

MOTION SEQ. NO. 1

MOTION CAL. NO.

The following papers, numbered 1 to 30 were read on this Article 78 petition.

Notice of Petition / Order to Show Cause – Affidavits – Exhibits

Answer

Amended Petition; Amended Answer

PAPERS NUMBERED

1-5

6-27

1A-8A; 9A-30A

Cross-Motion: [] Yes [X] No

**MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER**

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).

Dated: 11/7/08

JB
JOAN B. LOBIS, J.S.C.

Check one: [X] FINAL DISPOSITION

[] NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
In the Matter of the Application of

CRYSTAL GUZMAN,

Petitioner,

Index No. 401144/08

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

Decision, Order and Judgment

-against-

TINO HERNANDEZ, as Chairman of the
New York City Housing Authority,

Respondent.

-----X
JOAN B. LOBIS, J.S.C.:

UNFILED JUDGMENT
*This judgment has not been entered by the County Clerk
and notice of entry cannot be served hereon. To
obtain entry, counsel or a court representative must
appear in person at the Judgment Clerk's Desk (Room
141B).*

Petitioner, Crystal Guzman, brings this Article 78 proceeding, seeking to annul the determination by respondent, the New York City Housing Authority ("NYCHA"), to declare her ineligible for public housing, following a determination after hearing. The final determination was contained in a "Determination of Status" that was issued by the NYCHA on January 23, 2008, approving a January 11, 2008 decision by Hearing Officer Joan Pannell.

Petitioner, who was born in 1988 and is currently nineteen (19) years old, asserts that from the time she was an infant, she lived with her great-grandmother, Lydia Carrasquillo, at 410 East 105th Street in Manhattan, which is part of the East River Houses housing project. Ms. Carrasquillo became the tenant of record of the apartment in 1981. East River Houses is operated and maintained by the NYCHA.

The petition sets forth that Ms. Carrasquillo, who was born on March 1, 1930, raised petitioner since she was a baby. Petitioner's mother was sixteen (16) years old when she gave birth to petitioner; it is alleged that petitioner's mother relinquished custody of petitioner, as well as petitioner's two siblings. The petition itself is silent as to where the two siblings reside, whether petitioner's mother formally relinquished custody of any of her children, and whether there were any formal arrangements whereby Ms. Carrasquillo was named the legal guardian of petitioner.¹

On or about March 20, 2000, Ms. Carrasquillo contacted the NYCHA to request that petitioner be added to her household composition. This request is documented in a note that was recorded by a NYCHA employee in Ms. Carrasquillo's tenant file, which sets forth that "tenant [was] in to request permission for Christal [sic] to live in [apartment]." The petition notes that in 2000, petitioner was eleven years old, and had no knowledge that there was a request to add her name. But, petitioner states that at a later date, Ms. Carrasquillo told petitioner that Ms. Carrasquillo had asked to add petitioner to the apartment, had completed the paperwork, and had submitted the request to the NYCHA office. It is further alleged that Ms. Carrasquillo told petitioner that she never received a response to that request. There is no record in the file that Ms. Carrasquillo ever completed a "Permanent Permission Request Form" to add petitioner to the household.

In 2006, Ms. Carrasquillo contacted the NYCHA to request a transfer to a different apartment, based on medical reasons. Her file reflects that an NYCHA employee noted that the

¹ Testimony taken during the hearing, however, reflects that petitioner's grandmother, Carmen Guzman, resides at 210 East 102nd Street, another NYCHA residence. The grandmother has custody of petitioner's brother and sister, who reside there. It also appears that Ms. Guzman was the petitioner's legal guardian.

employee “spoke via telephone to tenant [and] requested she come into office to complete the transfer form to accompany the doctor letter. She will send her home health aide to pick up form later.” Further notations on September 14 and September 26 reflect that the form was given to Ms. Carrasquillo’s home health attendant. Annexed to the petition is a completed “Tenant Request for Transfer” form, dated September 19, 2006, which was signed by Ms. Carrasquillo. The form contains six (6) blank spaces for the names, social security numbers, dates of birth and relationship of the family members in the apartment. The only space that is completed is for Ms. Carrasquillo; petitioner’s name is not on the application.

Ms. Carrasquillo died on May 26, 2007, at 77 years of age. After learning of the death, the management office advised Ms. Carrasquillo’s daughter, Carmen Guzman, to relinquish the keys to the apartment. The notes in the tenant file indicate that petitioner’s grandmother told the management office staff that petitioner was still residing in the apartment. Upon being told that petitioner had no right to live in the apartment, since she was not listed as an occupant, petitioner’s grandmother told the office employee, as indicated in the tenant file notes, that although Ms. Carrasquillo tried to add petitioner to the household, she needed custody papers, and the judge would not give her custody because the judge believed Ms. Carrasquillo was too old to care for her great-granddaughter.

Petitioner filed a remaining family grievance, requesting that she be accepted as a tenant at East River Houses and obtain a lease. She was also served with a ten (10) day notice to vacate. The manager of East River Houses, Teri Dawson, denied the grievance on June 18, 2007.

In so doing, Ms. Dawson notes that although Ms. Carrasquillo requested permission for Crystal to join the household in 2000, “[a]ll of the annuals in the folder only listed Lydia within the household. As per procedures, Ms. Carrasquillo had to obtain legal guardianship or custody of her grandchild [sic - should be great-grandchild] Crystal. In interview with Crystal, her [great-]grandmother did not due to illness.” The determination further sets forth that since no permission was requested in writing by the resident; no request was granted by management; and, Ms. Carrasquillo did not have legal guardianship or custody of Crystal, there was no basis to find that petitioner was an eligible family member.

Petitioner requested a written review by the Borough Office. On August 15, 2007, the Borough Director issued a determination agreeing with the disposition of the manager. The determination notes that petitioner was not an original member of her great-grandmother’s household. The determination goes on to state that,

although Crystal Guzman’s grandmother, Carmen Guzman, had custody of her since birth, October 12, 1998, Lydia [sic - should be Crystal] Guzman contends that she has always resided in this household. However, the record shows that Lydia Carrasquillo was the sole occupant of the one-bedroom apartment from the date she moved in on July 1981 until she passed away on May 26, 2007. Although the file shows that in March 2000 Lydia Carrasquillo visited the office regarding permission for Crystal Guzman to join the household, there is no evidence to indicate that management ever received the written request. In addition, in September 2006, management received a request for transfer to another development that list[s] Lydia Guzman [sic - should be Carrasquillo] as the sole occupant. Consistent with GM3692 Amended, Occupancy and Remaining Family Member Policy Revision, permanent residency may only be acquired upon the written approval of the housing manager.

Petitioner sought an appeal from the denial by requesting a hearing. On November 13, 2007, a hearing was held before an Impartial Hearing Officer, Joan Pannell.

Petitioner was not represented by counsel at the hearing, although the Hearing Officer advised her of her right to appear by counsel or other representative of petitioner's choice. Senora Van Dyke testified on behalf of the NYCHA; petitioner did not cross-examine her. Petitioner testified on her own behalf that although her grandmother had custody of her, she moved in with her great-grandmother shortly after petitioner's birth, and lived there ever since. Petitioner presented unsworn letters from a former social worker at Mount Sinai Medical Center and an employee of its clinic; the letters state that petitioner has always resided with her great-grandmother. The Hearing Officer noted that there was a request in the file by Ms. Carrasquillo to add petitioner to the household. When Ms. Van Dyke testified at the hearing was questioned as to whether it is possible to know if the form to add a family member was ever given to Ms. Carrasquillo, there was no response.

Hearing Officer Pannell issued a decision, dated January 23, 2008, denying petitioner's grievance. The denial is based on a number of grounds: there is no indication that Ms. Carrasquillo ever returned a form by which to request permission for petitioner to reside in the apartment; the annual affidavits list only Ms. Carrasquillo as an occupant; the October 2006 request for a transfer lists only Ms. Carrasquillo as an occupant; petitioner's grandmother, and not her great-grandmother, had custody of her; and, since it was a one-bedroom apartment, petitioner could not be added as an occupant, because NYCHA regulations do not permit two individuals who are not

domestic partners to occupy a one-bedroom apartment. The Hearing Officer found that the grievance was not sustained. This proceeding followed.

Petitioner challenges the final determination of the Hearing Officer on the ground that the Hearing Officer made reference to NYCHA policies that were in effect as of the date of the hearing, rather than those policies that were in effect in March 2000. The NYCHA had a policy in effect, prior to 2002, that a tenant could make a request to add an individual to the tenant's household. Upon such a request, the NYCHA would provide the tenant with a Permanent Permission Request Form to complete. After receipt of the form, a manager from NYCHA would have up to ninety (90) days to review the permanent residency request. Under the procedure in effect prior to 2002, if the manager failed to make a determination to grant or deny the request to add someone to the household within the 90-day period, the individual was "deemed to have received permanent residency permission." In 2002, the NYCHA changed its policy concerning requests to add an additional person to the household. Under the new policy, the NYCHA eliminated the automatic granting of permission if no action had been taken by the manager within the 90-day period.

In her memorandum of law, petitioner argues that the determination was arbitrary and capricious and must be reversed.² Petitioner's arguments are without merit. It was not arbitrary and

² The verified amended petition sets forth that the determination was "arbitrary and capricious and not supported by substantial evidence." But, in the memorandum of law, petitioner argues only the arbitrary and capricious standard, and does not argue that the determination of the hearing officer was not supported by substantial evidence. "Whether a substantial evidence question is raised is determined solely by reference to the Article 78 petition." Stevens v. Wing, 184 Misc. 2d 342, 348 (Sup. Ct. N.Y. Co. 2000), citing Iza Land

capricious for respondent to determine that a formal request to add petitioner as a family member was never made. Although it is clear from the tenant file that Ms. Carrasquillo made a verbal request to add petitioner to the household, either she was never given the form to make a formal request, or she failed to return the form that was given to her. Annexed as Exhibit B to the amended petition is an excerpt from the NYCHA Management Manual that was in effect in 2000. Chapter IV, Subdivision IV, paragraph 4 provides that “[a] tenant must make a written request to the manager for a relative or other ‘family member’ (defined below) to become either a legally authorized permanent household member or a co-tenant.” The staff is required to give the tenant the form, which must be completed by both the tenant and the family member and returned to the Project Management Office. There is no evidence that a form was ever completed and returned to the office. In any event, thereafter, Ms. Carrasquillo did not act in a manner which reflected that she believed petitioner had been added as a member of the household. In no subsequent paperwork did Ms. Carrasquillo ever include petitioner’s name as a member of the household. For these reasons, petitioner’s reliance on Huff v. The New York City Housing Authority, Index No. 117171/06 (Sup. Ct. N.Y. Co. May 29, 2007) is misplaced. It is apparent from the decision in Huff that a written application for permission to add an individual as a family member was submitted to the NYCHA.

It is also of no consequence whether the NYCHA improperly considered the fact that the great-grandmother did not have custody of the minor petitioner, or whether the Hearing Officer

Management, Inc. v. Town of Clifton Park Zoning Bd. of Appeals, 262 A.D.2d 760 (3d Dep’t 1999). Since the issue here is framed as an issue of whether the application of the rules to petitioner’s factual circumstances was arbitrary and capricious, there is no issue of substantial evidence raised, and no need to transfer this proceeding to the Appellate Division, pursuant to C.P.L.R. § 7804 (g), even though a hearing was held. Stevens v. Wing, supra.

improperly considered the rule concerning occupancy of a one-bedroom apartment.³ This case turns on the fact that a written application was never submitted to request that petitioner be added as a family member to the household; at best, all petitioner can show is that Ms. Carrasquillo inquired about adding petitioner to the household and that she made a verbal inquiry as to requesting permission.

Since a written request was never submitted and since permission to add petitioner as an occupant was never obtained, the court is constrained to find that it was not arbitrary and capricious for respondent to find that petitioner cannot succeed her great-grandmother as a tenant to the apartment. Aponte v. New York City Housing Authority, 48 A.D.3d 229 (1st Dep't 2008) (finding that there is "no basis to relieve petitioners of the written permission requirement"); McFarlane v. New York City Housing Authority, 9 A.D.3d 289, 290 (1st Dep't 2004) (grandchildren of deceased tenant cannot succeed to apartment where written permission was never granted); Abdil v. Martinez, 307 A.D.2d 238, 242 (1st Dep't 2003) (denying Article 78 petition, and finding that daughter and her son cannot succeed to father's apartment where no written request was ever made and permission was not obtained); contrast with, Gill v. Hernandez, ___ Misc. 3d ___, 2008 WL 4602317 (Sup. Ct. N.Y. Co. Oct. 7, 2008) (court granted Article 78 petition since written approval to add daughter as Section 8 tenant was submitted and daughter's income information was always

³ According to petitioner, the requirement that a tenant has to show custody of a minor occupant of the apartment was not imposed until July 11, 2003, and the prohibition against permitting two individuals who are not domestic partners to occupy a one-bedroom apartment was not promulgated until November 1, 2001. But, in its amended answer, the NYCHA asserts that at least since 1995, a one-bedroom apartment has been deemed overcrowded if two persons occupied the apartment, unless the two persons were a married couple, domestic partners, or a single adult with a child less than six years old. A copy of the Occupancy Standards, GM-3468B - Appendix B, revised April 27, 1995, which is annexed as an exhibit to the amended answer, confirms this policy. Since petitioner was born in 1988, she was over the age of six in 2000.

included on lease renewal forms). Even though it may be true that the property manager and others were aware that petitioner was residing in the apartment, the NYCCHA cannot be precluded from finding that petitioner was not properly added to the household. Moreover, even if somehow petitioner could be deemed to have had permission to join the household in 2000, she cannot show that she remained in continuous occupancy thereafter, since she is not listed on any of the income affidavits following the year 2000, nor was she included on the transfer request that was submitted in 2006.

The petition is denied and this proceeding is dismissed. This constitutes the decision, order and judgment of the court.

Dated: November 7, 2008


JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT
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