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| Matter of Harris v New York City Hous. Auth. |
| 2008 NY Slip Op 33219(U) |
| November 21, 2008 |
| Supreme Court, New York County |
| Docket Number: 400379/08 |
| Judge: Marilyn Shafer |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHAFFER
Justice

PART 2

CLAUDE & DESIREE HARRIS
- v -
NYCHA

INDEX NO. 400379/08
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 5 were read on this motion to/for _____

| | PAPERS NUMBERED |
|---|-----------------|
| Notice of Motion / Order to Show Cause - <u>Petition</u> Affidavits - Exhibits ... | <u>1, 2</u> |
| Answering Affidavits - Exhibits <u>Memo of Law</u> | <u>3, 4</u> |
| Replying Affidavits <u>Memorandum</u> | <u>5</u> |

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is denied
in accord with the annexed memorandum.

FILED
DEC 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 11/21/08

HON. MARILYN SHAFER, JSC
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

PRESENT: HON. MARILYN SHAFER
Justice

PART 8

In the matter of the Application of
CLARENCE and DESIREE HARRIS,

INDEX NO. 400379/08

Petitioners,

MOTION DATE

-against-

MOTION SEQ. NO. 001

NEW YORK CITY HOUSING AUTHORITY,

MOTION CAL. NO.

Respondent.

The following papers, numbered 1 to 5, were read on this petition pursuant to Article 78:

PAPERS NUMBERED

Order to Show Cause – Verflfed Petition – Exhlblts 1,2

Verflfed Answer — Exhibits 3

Memorandum of Law 4

Transcript

Cross-Motion: Yes No

FILED
DEC 03 2008
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that this petition to reverse the determination of the Housing Authority is denied.

This is a proceeding brought pursuant to Article 78, seeking a reversal of the New York City Department of Housing Authority determination, dated Dec. 17, 2007, upholding the denial of remaining-family-member succession rights.

Background

Petitioners and their daughter lived with Brian Scarborough, a "childhood friend" and the tenant of record of an apartment in the Housing Authority's Lincoln Houses development, from 1996 until April 24, 2007, when Scarborough died. They never sought permission for their occupancy and were unaware whether Scarborough had sought permission. They paid Scarborough rent of \$400 a month. Following his death, they learned the rent for the apartment was \$143 per month.

After Scarborough's death, they sought remaining-family-member status and succession rights to the apartment. Mrs. Harris met with the project manager who concluded she was not eligible to succeed to Scarborough's lease according to the Housing Authority's established succession rights criteria because Scarborough was the sole authorized occupant of the apartment, listed himself annually as the only person living in the apartment, and never requested permission for the Harris family to join his household.

In an August 9, 2007 District Grievance Summary, the borough administrator agreed with the project manager, noting in addition that neither Mr. Nor Mrs. Harris was a relative of Scarborough's who could have achieved permanent residence status even if the tenant had sought permission.

On October 25, 2007, Mr. Harris appeared for a grievance hearing on behalf of his wife and himself. Noting that petitioners were not listed on any of the recent affidavits of income submitted by Scarborough or on the Tenant Data Summaries submitted by him,

the hearing officer found that petitioners failed to establish a *prime facie* case of residual tenancy.

Petitioners filed two petitioners regarding the October 25 hearing, but neither was served on the Housing Authority. They ask that this Court consider the untimely petition and permit them to submit additional documentation.

Discussion

It is well settled that judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious or lacks a rational basis. (*In re Application of Chelrae Estates, Inc v State Division of Housing and Community Renewal, Office of Rent Administration*, 255 AD2d 387, 389 [1st Dept. 1996] *citing*, *Matter of Pell v Board of Education*, 34 NY2d 222, 230-231 [1974]). An Article 78 proceeding is limited to consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and “[t]he function of the court . . . is to determine . . . whether the determination had a rational basis in the record (*In re Application of HLV Associates v Aponte*, 223 AD2d 362, 363 [1st Dept. 1996]; *citing*, *Matter of Fanelli v New York City Conciliation & Appeals Bd*, 90 AD2d 756, 757 [1st Dept. 1982]). Courts are not permitted to substitute their judgment for that of the administrative agency where said decision is rationally based on the record (*In re Application of Royal Realty Co v New York State Division of Housing and Community Renewal*, 161 AD2d 404, 405 [1st Dept. 1990] *citing*, *Fresh Meadows Associates v New York City Conciliation and Appeals Board*, 88 Misc.2d 1003 [New York County 1976])

The Housing Authority has promulgated guidelines, in accord with its state-authorized and federally-mandated powers, to determine which of the many applicants seeking public housing are accepted as tenants. (24 CFR §960.202(a); NY Pub Hous Law §§ 37 (l)(w)) Housing Authority records show nearly 130,000 families on the waiting list for its apartments and an annual turnover rate of only 3.35%.

Upon the death of a tenant of record, authorized permanent members of the tenant's household may, under certain circumstances, establish remaining-family member status and have succession rights to the apartment. In order to achieve this status. A person must: (a) have moved into the apartment lawfully (1) as a member of the original family, or (2) by birth, adoption, or as a ward subsequent to move-in, or (3) with the written permission of project management; and (b) have remained in continuous occupancy thereafter; and c) be otherwise eligible for public housing. (Housing Authority's Management Manual, Chapter VII, Section IV, Subsection F; GM-3692)

Petitioners cannot satisfy these requirements. It is undisputed that they never obtained written permission from the management to occupy the apartment. Therefore, they never entered the apartment lawfully. (*Abreu v NYCHA*, 52 AD3d 432 [1st Dept 2008]) Moreover, GM-3692, passed in November 2002, restricts the granting of permanent permission to certain close relatives. Prior to its passage, petitioners may have been granted permission to join Scarborough's household. After its passage, that permission would have been denied even if it had been sought.

The agency's determination is, then, lawful and rational. Justice will not be served by extending petitioners' time to serve their petition, because they cannot establish succession rights to the apartment. While this Court is not unaware of the hardship that

will result to the petitioners from the loss of the apartment, this Court has no discretionary authority or interest of justice jurisdiction to review this decision. (*Wooten v Finkle*, 285 AD2d 407 [1st Dept 2001])

We have considered the other arguments of the parties and find them to be without merit.

Accordingly, it is

ORDERED that the petition is denied.

This reflects the decision and order of the court.

Dated: 11/21/08 _____
Marilyn S. Safer

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

FILED
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NEW YORK