

Matter of Jackson v NYC Hous. Auth.
2008 NY Slip Op 33299(U)
December 5, 2008
Supreme Court, New York County
Docket Number: 401083/08
Judge: James A. Yates
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY
PRESENT: Hon. JAMES A. YATES PART 50Y
Justice

In the Matter of the Application of

Index No. 401083-08
MOTION DATE

ANTHONY JACKSON,

MOTION SEQ. NO. 001

Petitioner,

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

against

NYC HOUSING AUTHORITY,

Respondent.

FILED
DEC 10 2008
COUNTY CLERK'S OFFICE
NEW YORK

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

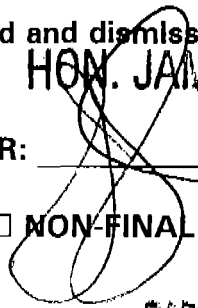
	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits...	_____
Answering Affidavits - Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Petitioner filed an Article 78 petition against the New York City Housing Authority (NYCHA) for an order granting him a public housing lease as a successor tenant/remaining family member in the household of his deceased mother, tenant of record Marie Jackson, who resided in the Jefferson Houses project. There is no support in the record for finding that NYCHA's determination that Petitioner was ineligible for succession rights was affected by an error of law or was arbitrary or capricious. Accordingly, the petition is denied and dismissed (see attached Decision and Order).

HON. JAMES A. YATES

Dated 12/3/08

ENTER: _____, J.S.C.


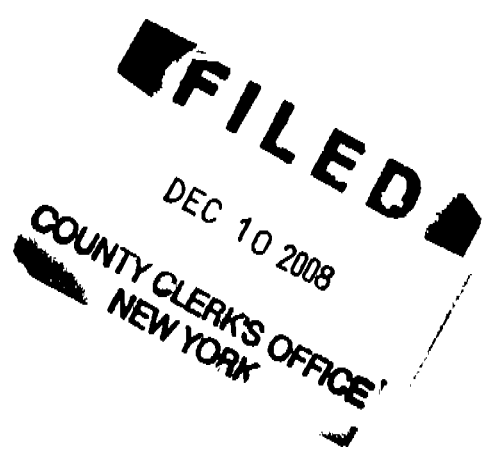
Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

PART 50Y
SUP. CT. N.Y. COUNTY

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50Y**

-----X
In the Matter of the Application of :
ANTHONY JACKSON, :
: :
Petitioner, :
: :
: **Decision and Order**
: **Ind. No. 401083/08**
For an Order Pursuant to Article 78 of the :
Civil Practice Law and Rules, :
: :
-against- :
: :
NEW YORK CITY HOUSING AUTHORITY, :
Respondent. :
: :
-----X



Hon. James A. Yates, J.S.C.

Petitioner Anthony Jackson filed an application, pursuant to Article 78 of the Civil Practice Law and Rules, against the New York City Housing Authority (NYCHA) for an order granting him succession rights, as a remaining family member, to the public housing apartment formerly leased to his deceased mother. His mother, Marie Jackson, was the tenant of record of apartment 4D in a building located at 2185 Second Avenue, part of the Jefferson Houses in East Harlem. Petitioner contends that the determination was arbitrary and capricious because the building manager should have acted on his mother's request to add him to the lease in 1993. He also contends that NYCHA knew about and implicitly approved his residency by taking no preventative action against him. NYCHA argues that even if the Management Office would have considered Ms. Jackson's permission request, Petitioner would have been found ineligible for occupancy because he failed to reside in the apartment at least one year before his mother's death. NYCHA also contends that Petitioner was deemed ineligible for public housing because of his prior criminal convictions.

Background

Petitioner's mother, Marie Jackson, moved into apartment 4D in 1956. Anthony Jackson and his brother, Eric Jackson Jr., were subsequently born into the household. Ms. Jackson died on

October 15, 1999. Between January 1992 and February 1999, the Petitioner was not listed on any of the tenant's income affidavits. The tenant folder does contain a request for permanent permission to occupy the apartment on February 2, 1993, but the form was never date stamped received by the Management Office. The folder also contains a note indicating that the Petitioner inquired about obtaining permission to reside in the apartment on April 14, 1994. On that day, he was given a Permission Request Form and a Non-Employment affidavit. There is no entry indicating that Petitioner ever submitted the Request Form.

In February 2000, Eric Jackson Sr., Petitioner's brother sought to succeed to his mother's tenancy. He informed the NYCHA that he and Petitioner left their mother's household in 1983. However, he claimed that his son, Eric Jr., moved into his mother's apartment in September 1999. He informed the Management Office that his brother was residing in upstate New York. After an administrative hearing on his claim, Petitioner's brother was found ineligible to succeed to the lease based on a prior criminal conviction of Manslaughter in the First Degree in 1983. Subsequently, he filed an Article 78 petition to challenge NYCHA's determination which the Supreme Court transferred to the Appellate Division, First Department, on April 17, 2003. However, he failed to perfect his appeal. On May 5, 2005, Eric Sr. died.

Shortly thereafter, the Management Office discovered that Petitioner was living in the apartment and sent him three notices, informing him that he could pursue a remaining family member grievance. The notices are dated December 27, 2005, February 2, 2006, and June 7, 2006. On March 7, 2007, Petitioner responded to the notices and met with the Housing Manager to discuss the basis for his remaining family member claim. He informed her that he had returned to the apartment in 1993, after his first release from prison, and that in January 2007 he had petitioned Family Court for custody of his nephew, Eric Jr., who was then 17 years old. He presented the Manager with a copy of his Petition for Custody, dated January 30, 2007. On March 15, 2007, the Housing Manager denied Petitioner's application because he and his nephew had not been granted permission to join the household and because his prior criminal convictions made him ineligible. The decision was forwarded to the Manhattan Borough Management Office for review. After meeting with Petitioner and reviewing the facts, the Borough Administrator upheld the Housing Manager's decision on May 4, 2007. On May 11, 2007, Petitioner submitted his written request to the Management Office for a formal hearing before an impartial hearing officer.

On July 24, 2007 and October 17, 2007, a hearing was held before Hearing Officer Stuart Laurence. Petitioner represented himself. He testified that he was an original member of the household who was incarcerated from 1984 until 1990, after his conviction for Manslaughter in the Second Degree, a felony offense. He testified that he returned to the apartment after his release from prison. He was imprisoned again from 1994 until 2000 after he pleaded guilty to Criminal Possession of a Weapon in the Second Degree, another felony. His parole for his 1994 conviction ended on July 9, 2004. Petitioner also testified that on January 21, 2007, he was arrested for driving while intoxicated. On October 2, 2007, he pleaded guilty to the charge, an unclassified misdemeanor. He informed the Hearing Officer that he now had a conditional license and still needed to pay a fine and complete a court-ordered Drinking Driving Program. He later

admitted that in 1993, his mother put him out of her apartment. He testified that he returned to his mother's house after his release from prison in 2000. He also testified that he took care of his brother during his illness and paid the rent. He further alleged that he lived in the apartment with his 17 year-old nephew, and that the NYCHA knew about and implicitly consented to his residency because he had signed repair forms.

He further testified that he had four part-time jobs, including one in security and maintenance at the New York State Armory and as a test proctor with the New York City Department of Citywide Administration. He also testified that he was employed as a cook by the US Open Tennis Tournament and Macy's Food Services. He had earned approximately \$17, 000 in 2006. Petitioner submitted letters from two neighbors who referred to him as a "good neighbor." A housing assistant testified that NYCHA first became aware of his presence in 2005, when his brother died. On January 18, 2008, the Hearing Officer found that the record revealed no explanation for management's failure to act on his permanent permission request made in 1993. Nonetheless, he held that Petitioner "failed to meet the required eligibility standards." That decision was adopted by NYCHA's governing Board on February 6, 2008. Shortly thereafter, Petitioner filed his Article 78 application challenging the determination.

Discussion

NYCHA is a public corporation created to construct and manage affordable housing for low-income families in New York City. Because the federal government funds and regulates public housing, NYCHA must annually certify to the Department of Housing and Urban Development (HUD) that it has admitted applicants for public housing in compliance with their federal regulations and the United States Housing Act (*see*, 42 USC §§1437 et seq.; 24 CFR §§ 960.201 et seq.). It is vested with the authority to establish eligibility criteria for occupancy of its apartments (*see*, PHL §§ 37 [1] [w], 156). Families have an obligation to request NYCHA's written approval before adding any individual family members to their family unit. *See* NYCHA Management Manual, Chap IV, Subdivision IV.F.1,4. Gaining succession rights requires that an occupant 1) lawfully moved into the apartment when written permission to join the household was given 2) qualifies as one of the specified relatives of the tenant of record 3) remained continuously in the apartment for not less than one year immediately prior to the date the tenant of record vacates the apartment or dies and 4) otherwise meets the eligibility requirements for public housing in accordance with the agency's admission standard. *See* NYCHA Management Manual, Chapter VII-Termination of Tenancy, Remaining Family, Section IV, § E [1] [a]; *see also* NYCHA Applications Manual, Chapter VI, Standards for Admission, F [4].

The record shows that Petitioner's mother attempted to add her son to the household in 1993. Instead of following the agency's regulations for processing her application, the Housing Manager failed to process Ms. Jackson's application. However, NYCHA is not estopped from denying remaining family member status on that basis. *See In re Rodriguez v Hernandez*, 51 AD3d 532 [1st Dept 2008].

Here, Petitioner failed to meet the requirements to succeed to his mother's lease as a remaining family member. His mother's death in 1999 prevents Petitioner from meeting the one year residency requirement even if he had received permission in 1993. He was in prison from 1994 until 2000 on his second felony conviction. His testimony at the administrative hearing was that his mother threw him out of her apartment in 1993. He also conceded at the hearing that he did not complete his second prison term until after his mother's death. This set of facts is corroborated by the tenant of record's annual affidavits from 1993 through 1999, in which the tenant of record listed no occupants other than herself. Based on the evidence, there is also no merit to Petitioner's argument that NYCHA was actually aware of his residency and implicitly approved it.

NYCHA's eligibility requirements authorize it to "exclude persons who, based upon their past behavior, might adversely affect the health, safety or welfare of other tenants." *See* 24 CFR § 960.203 [2]. Relevant information to be considered includes "[a] history of criminal activity involving crimes of physical violence to persons or property and other criminal acts ..." 24 CFR 21 § 960.203 [b] [3]. If unfavorable information is received about an applicant, "consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors which might indicate a reasonable probability of favorable future conduct..." 24 CFR § 960.203 [d]. The Housing Authority regulations, promulgated pursuant to the federal regulations, provide that a person with a conviction for a certain felonies is ineligible for public housing until that person has served the sentence, including the completion of probation or parole, and "has also completed five years after the sentence with no further convictions or pending charges." Chapter I, § VI [H] [2] [a] [2] (revised 7/19/94); *see also Castanon v. Franco*, 290 AD2d 293 [1st Dept 2002].

The written Housing Authority guidelines for staff and hearing of officers provide that mitigating circumstances should be considered which indicate that the offender, after completing the imposed sentence, has made "significant positive changes." Great weight is to be given to proof that since the offense the offender has remained in school for at least six months and compiled a positive school record; has enrolled in a job-training program and has compiled a positive record for six months; has kept a job for six months and compiled a positive work record; or has enrolled in a counseling program designed to correct the offending behavior and has compiled a positive record in the program for six months. A letter from a member of the clergy indicating the offender has made significant positive changes, or a letter from the prosecutor's office or from the sentencing judge stating that the applicant has been rehabilitated also carries weight.

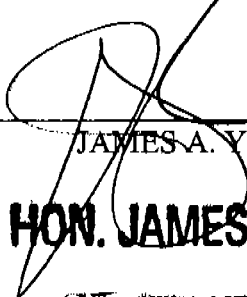
In this case, Petitioner has a violent criminal background. He engaged in criminal behavior during the pendency of his claim. Because Petitioner completed his five year period of parole in July 2004, five years have not yet passed since his sentence was completed. In fact, he remains ineligible for public housing until July 2010. In addition, Petitioner failed to present credible evidence of rehabilitation at the hearing. *See Faison v NY City Hous. Auth.*, 283 AD2d 353, 357 [1st Dept 2001]. While Petitioner did present proof that he completed a certificate in a food preparation course, he testified that he had failed to pay his fines and to complete a court-

ordered drinking and driving program. As well, it was not improper for NYCHA to discredit Petitioner's claim of employment with the New York State Armory since it appears that his brother, James Jackson, is the Armory Superintendent who vouched for him.

A court reviewing an administrative decision may only consider "[w]hether a determination was made in violation of lawful procedure, was effected by error of law, or was arbitrary or capricious or an abuse of discretion." CPLR § 7803; *see also Pell v Board of Educ.*, 34 NY2d 222, 231 [1974]. Since the rules and regulations relating to succession rights support the agency's determination that Petitioner was ineligible for public housing, NYCHA's decision was not arbitrary or capricious, and must be upheld. Accordingly, Petitioner's application for Article 78 relief is denied.

This constitutes the Decision and Order of the Court.

Dated: December 5, 2008
New York, New York



JAMES A. YATES, J.S.C.
HON. JAMES A. YATES
PARTY BY
SUP. CT. N.Y. COUNTY

FILED
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