

**Matter of Campbell v New York City Hous.
Auth.**

2008 NY Slip Op 33401(U)

December 15, 2008

Supreme Court, New York County

Docket Number: 401799/08

Judge: Shirley Werner Kornreich

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

PRESENT: _____
Justice

PART 54

Karen Campbell

INDEX NO.

401799/08

MOTION DATE

9/11/08

MOTION SEQ. NO.

1

MOTION CAL. NO.

- v -

NYCHA

The following papers, numbered 1 to 3 were read on this motion to/for Article 78

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2,3

Cross-Motion: Yes No

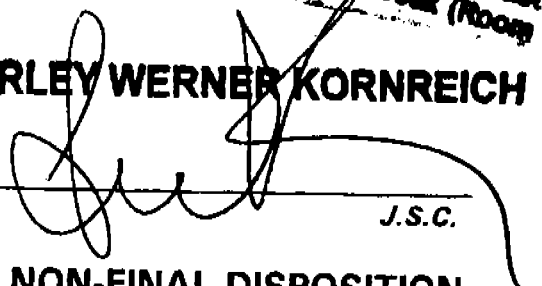
Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry must be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 147B).

HON. SHIRLEY WERNER KORNREICH



J.S.C.

Dated: 12/15/08

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

THIS MESSAGE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

----- X
In the Matter of the Application of
KAREN CAMPBELL,

Petitioner,

Index No.: 401799/08

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

DECISION
and ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent.

----- X
KORNREICH, SHIRLEY WERNER, J.:

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 1428).

Pro se petitioner Karen Campbell brings this Article 78 proceeding and seeks a judgment reversing respondent New York City Housing Authority's ("respondent" or "Housing Authority") denial of her application to open her default for failing to appear at her remaining-family-member grievance hearing. Petitioner claims she has succession rights for Apartment 2D at 1149 229th Drive North, Bronx, New York (Premises), which was previously leased to her deceased mother Julia Campbell (Ms. Campbell). Petitioner defaulted in appearing for her remaining-family-member grievance hearing and, following an inquest, the Housing Authority determined that petitioner did not qualify as a remaining family member. The Housing Authority denied petitioner's application to open her default because she failed to explain her delay in making the application and due to her delinquency in use and occupancy rental payments. Petitioner challenges this determination. Respondent opposes.

I. *Background*

The Housing Authority is a corporate governmental entity created to build and operate low-income housing in New York City. Since the federal government funds and regulates public housing, the Housing Authority must annually certify to the Department of Housing and Urban Development (HUD) that it has admitted individuals and families in accordance with HUD regulations. HUD mandates that the Housing Authority regularly monitor the composition and income of each family that has been admitted into public housing. Tenant families also have corresponding obligations to request respondent's approval before adding any family members as occupants of a unit, and to supply any information necessary when the Housing Authority conducts examinations of family income and composition.

Pursuant to Housing Authority regulations, there are two exceptions to its formal tenant selection process where a tenant of record can lawfully add "authorized family members" to live in their unit. The first is where the Housing Authority allows another individual to become a permanent member of the tenant's household. To add a person to the household, the tenant of record must obtain the written consent of the building development manager. The second exception allows a remaining-family-member to take over a lease if the tenant of record either moves or dies. To qualify under this exception, the remaining-family-member must have moved into the apartment lawfully, remained in the apartment continuously, and be eligible for public housing. Lawful members of a tenant's household include the original tenant family, a person born to the tenant of record or to an authorized permanent family member, a person legally adopted by or judicially declared to be the ward of the tenant of record or an authorized family member, or a person who receives written permission to reside in the apartment permanently. In

each instance, the person claiming remaining-family-member status must have become an authorized family member of the tenant household and must have remained in the apartment continuously from their date of entry.

On July 11, 2003, the Housing Authority revised its remaining-family-member policy regarding any requests for permanent occupancy that were either pending or made on or before November 24, 2002. The revised policy provides that certain relatives of the tenant of record "may have remaining-family-member rights if they receive the Housing Manager's permission for permanent occupancy in writing on or after November 24, 2002 [and they] thereafter remain in continuous occupancy, i.e., on all [of an] Occupant's Affidavits of Income from the date of the issuance of written permission for permanent occupancy from the Housing Manager for not less than one year immediately prior to the date the tenant of record vacates the apartment or dies, subject to independent verification from the Housing Manager."

The Housing Authority provides a grievance procedure to determine if an occupant qualifies as a remaining-family-member. First, the grievant must meet with the development manager to discuss the claim. If the development manager does not offer the grievant a lease, he must submit the grievant's file to the District Office for further review. If, after review, the District Office denies the grievant's request, but determines the grievant has made some showing that she could qualify for relief, the grievant is given the opportunity to request a formal hearing. The Housing Authority will then notify the grievant of a hearing date before an impartial hearing officer. The notice also informs the grievant of her right to appear in person, have witness testimony and be represented by counsel. After the hearing, the presiding officer determines whether the grievant should be granted a lease to the apartment as a remaining-family-member.

Finally, members of the Housing Authority's Board review the hearing officer's decision and make a final determination.

Ms. Campbell began living in the Premises in or around August 18, 1961. During this time, she lived with her husband and their five children, including petitioner. Over time, her husband passed away and all of the children moved out. Petitioner moved out in 1977. Moreover, the NYCHA Affidavits of Income for the Premises from July 15, 1999 through June 7, 2005 list Ms. Campbell as the sole occupant. Respondent's Exhibit D. When Ms. Campbell passed away on November 23, 2005, she was still listed as the Premises' only occupant.

As of February 16, 2006, one of petitioner's brothers was living in the Premises with his nieces. He informed the Housing Authority that he would be moving out by the end of the month. In or around March 3, 2006, petitioner wrote the Housing Authority stating that since she and her two children had been living at the Premises for some time, she wanted a new lease on the ground that she qualified as a remaining-family-member.

Pursuant to Housing Authority regulations, on March 15, 2006, petitioner met with the Housing Manager. Petitioner claimed she qualified as a remaining-family-member because she was an original member of the tenant family who moved back in when her mother got sick. Respondent's Exhibit N. The Housing Manager denied petitioner's remaining family member request both because Ms. Campbell was the only listed tenant of record for the Premises and had never made a formal request to add petitioner to the household. *Id.* On March 21, 2006, the Housing Authority sent petitioner a letter explaining that she was entitled to an informal grievance hearing with the Bronx Borough Management Office and that she may submit any further documentation to that office in support of her remaining family member claim.

Respondent's Exhibit O. Petitioner's meeting with the Bronx Borough Office took place on April 21, 2006. In a decision dated April 26, 2006, Bronx Borough Director Mark Papa upheld the Housing Manager's decision. Mr. Papa cited the following reasons for his concurrence that petitioner was not entitled to remaining-family-member status:

1. [Petitioner] was a member of the original family composition, moved out and did not receive permanent permission to join the Household in writing from Management.
2. [Ms. Campbell] never requested permission from Management to allow [petitioner] to return to the household.
3. [Ms. Campbell] never received written permission from the Housing Authority to allow [petitioner] to reside in the apartment.
4. If [petitioner] was living in the apartment it was without written permission from the Housing Authority.
5. [Petitioner] claimed she returned to the apartment in June of 2005. [Ms. Campbell] died in November 2005. Housing Authority procedure GM-3692 clearly states that a remaining family member must become a member of the household composition one year before the tenant of record vacates the apartment.

Respondent's Exhibit P. Thereafter, the District Office notified petitioner that she needed to submit a written request for a formal hearing if she wished to further pursue her remaining family member claim. On May 5, 2006, petitioner sent respondent a letter asking for her claim to be reconsidered. Respondent's Exhibit Q.

In a letter dated September 28, 2006, respondent notified petitioner that her formal hearing would take place on October 31, 2006 at 11:00 a.m. Respondent's Exhibit R. In this letter, the Housing Authority notified petitioner that she "may appear in person with...witnesses...and be represented by counsel or other representative of your choice. If you desire legal representation and cannot afford a lawyer, it is suggested that you contact one of the agencies which provide free legal services." *Id.* Respondent also served petitioner with a copy of its affirmative defenses and counterclaims as well as copies of the procedures which govern

the hearing. *Id.*

Following several adjournments, petitioner's hearing finally took place on July 14, 2007. Petitioner, however, failed to appear and an inquest was held before Hearing Officer Joan Pannell. At the hearing, Housing Authority Legal Secretarial Assistant Marie Pearson testified that she mailed petitioner a letter via first class mail notifying her of the date and time of the hearing. Hearing Transcript pp. 26-27. The Housing Authority attached a copy of this letter in support of its opposition to this petition. Respondent's Exhibit S. Several items of documentary evidence were introduced by the Housing Authority including: a rent ledger card indicating that as of June 14, 2007, use and occupancy was owed on the Premises in the amount of \$593; Ms. Campbell's death certificate; a tenant data summary showing that petitioner was an original family member of the household; an interview record dated November 18, 1977, memorializing Ms. Campbell's statement that as of that date petitioner was no longer living at the Premises; an interview record dated April 26, 2006, memorializing petitioner's statement to management that she resumed living at the Premises in June 2005; and seven affidavits of income ranging from July 15, 1999 to June 7, 2005 listing Ms. Campbell as the Premises' sole occupant. In addition, Housing Assistant Nicole Harris testified as to the veracity of the documentary evidence and also to the fact that Ms. Campbell never requested permission to have petitioner added as a remaining-family-member. Hearing Transcript pp. 29-37. Ms. Harris acknowledged that on April 26, 2006, petitioner notified management that she moved into the Premises in June of 2005. *Id.* at 35.

Following a review of the testimony and documentary evidence, in a decision dated July 20, 2007, Hearing Officer Pannell dismissed petitioner's remaining-family-member claim.

Respondent's Exhibit U. In pertinent part, she stated:

[Petitioner] was noticed to appear on 6/14/07 at 10:00 A.M. At 12:10 P.M. she had neither appeared nor otherwise communicated, and a hearing in the nature of an inquest was commenced in her absence...

Housing Assistant Manager Nicole Harris testified that management was unaware of [petitioner's] presence [in the Premises] until after [Ms. Campbell's] death. [Petitioner's] letter requesting the instant hearing stated that she had returned to the household about a year prior to the tenant's death.

Even if [petitioner] indeed returned to the household a year prior to [Ms. Campbell's] death, her residence was not authorized. Hence she is not a remaining family member as defined by NYCHA's regulations...The grievance is not sustained.

Id. In a decision dated August 8, 2007, the Housing Authority adopted Hearing Officer Pannell's ruling and dismissed petitioner's remaining-family-member claim. Respondent's Exhibit W.

On or about June 10, 2008, petitioner filed a formal application to open her default and obtain a new hearing. Respondent's Exhibit X. In her application, petitioner indicated that she missed her hearing because she was having trouble breathing and went to the emergency room at OLM Hospital to receive care. *Id.* She also indicated that she called "250 Broadway to let them know I was having trouble breathing and I even told them I would still try to come and they told me no." *Id.* She further indicated that she had a legitimate claim because she moved back into the Premises a year before her mother passed away and that "everyone in the management office knew" she was living there. *Id.* The Housing Authority opposed petitioner's application to open her default since she now owed \$5,277.03 in use and occupancy, \$531 per month in rent from October 2007 through June 2008 in addition to a balance of \$477.93 carried over from September of 2007. Respondent's Exhibit Y. In a decision dated June 18, 2008, Hearing Officer Pannell denied petitioner's application to vacate her default stating that petitioner failed to

adequately “explain her delay” and was delinquent in use and occupancy payments.

Respondent’s Exhibit Z.

In September 2007, the Housing Authority commenced a summary holdover proceeding against petitioner in Bronx County Civil Court. Petitioner failed to appear for a hearing in September 2007, and an inquest was held before Civil Court Judge Jose Rodriguez. In a decision dated December 5, 2007, Judge Rodriguez granted a final judgment of possession of the Premises in favor of the Housing Authority. Respondent’s Exhibit BB. On April 17, 2008, the court issued a warrant of eviction. Respondent’s Exhibit AA.

On May 20, June 5 and June 12, 2008, petitioner moved by Order to Show Cause, for an extension of time to stay the eviction. Each request was denied. On July 2, 2008, petitioner again moved, by Order to Show Cause, for an extension of time to stay the eviction. Once gain, Judge Rodriguez denied the motion after petitioner failed to appear. Respondent’s Exhibit CC.

On July 28, 2008, Marshal Ruth Burko executed the warrant of eviction and petitioner was evicted from the Premises. Respondent’s Exhibit DD. On August 1, 2008, petitioner again moved, by Order to Show Cause, to restore to her possession of the Premises. In a decision dated August 4, 2008, Judge Rodriguez denied the motion. Respondent’s Exhibit EE.

II. *Conclusions of Law*

A court reviewing an Article 78 proceeding must judge the propriety of an administrative action solely on the reasons cited by the administration. *Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d 753, 758 (1991). Such an action must be upheld unless it “shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law.”

Featherstone v. Franco, 95 N.Y.2d 550, 554 (2000). CPLR section 7803 states that the

following questions may be raised in an Article 78 proceeding: "Whether a determination was made in violation of lawful procedure, was effected by error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed."

In order to vacate a default in an Article 78 proceeding, a petitioner must demonstrate both a reasonable excuse for the default and a meritorious claim. *Barnhill v. NYCHA*, 280 A.D.2d 339 (1st Dept 2001).

Here, petitioner has neither demonstrated a reasonable excuse for failing to appear at her hearing nor a meritorious remaining-family-member claim. Petitioner contends that she did not appear for her formal grievance hearing because she was at OLM Hospital due to difficulty breathing. To date, petitioner has not offered any documentary evidence to support this assertion. Petitioner further claims that she called "250 Broadway" to alert respondent of her predicament. However, petitioner once again fails to offer any evidence in terms of when she made the call and/or who she spoke with to back up this assertion.

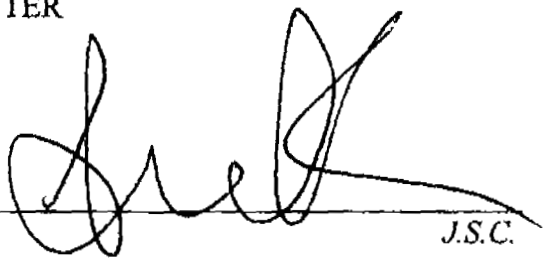
Moreover, petitioner also has not presented any proof evidencing a meritorious remaining-family-member claim. Both prior to and following her mother's death, petitioner failed to get permission from the Housing Manager to reside in the Premises. She was not listed as a tenant on any of the Premises Affidavits of Income filed between 1999 and 2005. Therefore, the decision by Hearing Officer Pannell to deny petitioner's request to vacate her default was neither arbitrary nor capricious. *Jacobowitz v. NYCHA*, 49 A.D.3d 278 (1st Dept 2008) (denial of remaining family member claim affirmed where, although petitioner was a member of the original tenant family, no affidavits of income for four years leading up to her parents vacator of

premises listed her as an occupant); *Torres v. NYCHA*, 40 A.D.3d 328 (1st Dept 2007) (where petitioner not in compliance with one-year rule, no basis to hold that NYCHA's decision to deny remaining family member claim was arbitrary or capricious); *Rodriguez v. Hernandez*, 51 A.D.3d 352, (1st Dept 2008) (Housing Authority's determination that petitioner was not remaining family member entitled to succession rights of subject apartment neither arbitrary nor capricious where record showed, *inter alia*, that deceased tenant's affidavits of income showed that she was sole occupant of apartment); *Jamison v. NYCHA*, 25 A.D.3d 501 (1st Dept 2006) (Housing Authority's denial of petitioner's application for remaining family member status affirmed and held as neither arbitrary nor capricious where, *inter alia*: respondent did not give tenant of record permission to add petitioner to household; petitioner never obtained written permission from housing manager to join household; affidavits of income for years petitioner allegedly lived in apartment listed tenant as sole occupant; Housing Assistant testified that prior to tenant's death he never requested for anyone else to join household). Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and judgment of the Court

ENTER



DATE: December 15, 2008
New York, NY

UNFILED JUDGMENT
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, original or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1412A).