

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

2009 NY Slip Op 30670(U)

March 25, 2009

Supreme Court, New York County

Docket Number: 402609/08

Judge: Shirley Werner Kornreich

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

PRESENT: KORNREICH  
Justice

PART 54

GEORGE MIDDLETON  
- v -  
NYCHA

INDEX NO. 802609/08  
MOTION DATE 1/29/09  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 4 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
<u>1-2</u>
<u>3-4</u>

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 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: 3/25/09

JUSTICE SHIRLEY WEINER KORNREICH  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

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

----- X  
In the Matter of the Application of  
GEORGE MIDDLETON,

Petitioner,

Index No.: 402609/08

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

DECISION  
and ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

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

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served hereon. To  
obtain entry, the judgment must be  
renewed in accordance with the Rules of Court.

Pro se petitioner George Middleton brings this Article 78 proceeding and seeks a

judgment reversing respondent New York City Housing Authority's ("respondent" or "Housing Authority") denial of his claim for succession rights to apartment 2M at 2070 Clinton Avenue in the Bronx (Premises). The Premises were leased to his mother, Queenie Middleton, until her death on January 3, 2008. Respondent opposes.

1. *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 his 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. Pursuant to that procedure, 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 his 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.

In December of 1981, petitioner's mother, Mrs. Middleton, moved into apartment 2D at 2070 Clinton Avenue. She subsequently switched apartments and moved into the subject Premises in 1989. The NYCHA Affidavits of Income for the Premises list Mrs. Middleton as the sole occupant until 2006, when she listed petitioner. Once the Housing Authority learned of this unauthorized occupancy, it set up a meeting between Mrs. Middleton and management to

outline the procedure for properly adding petitioner to the household. At this meeting, it was explained to Mrs. Middleton that she would have to add petitioner's income to the household so that the Housing Authority could recalculate her rent. Once Mrs. Middleton learned that her rent might increase by adding petitioner to the household, she crossed his name off the 2006 Affidavit of Income. Respondent's Exhibit I. In 2007, Mrs. Middleton was once again listed as the Premises' sole occupant. When Mrs. Middleton passed away on January 3, 2008, she was still listed as the Premises' only occupant.

Following his mother's death, petitioner notified respondent that he sought to remain in the Premises. Management notified him that if he sought permanent residence, he had to go through the formal grievance procedures. In a letter dated January 10, 2008, petitioner filed a remaining-family-member-claim.

On January 23, 2008, management met with petitioner to discuss his claim. At the meeting, the Housing Manager concluded that petitioner was not entitled to succession rights because he was never added to the household as a remaining-family-member. In addition, Mrs. Middleton had never requested permission to add petitioner to the household.

The Housing Manager subsequently forwarded its decision to the Bronx Borough Management Department (BBMD) for review. In a letter dated January 25, 2008, the BBMD informed petitioner that he must submit any further documentary evidence to support his claim by February 6, 2008. In a District Grievance Summary dated March 14, 2008, the BBMD affirmed the Housing Manager's decision. This summary also informed petitioner that if he wished to challenge this determination, he must submit a written request for a hearing before an impartial hearing officer within ten (10) business days after receiving the decision. In a letter

dated March 27, 2008, petitioner requested such a hearing.

In two separate letters dated May 23 and July 8, 2008, the Housing Authority advised petitioner of its affirmative defenses and counter-claims, enclosed a copy of its grievance procedures, and advised petitioner of his right to be represented by counsel. The hearing was scheduled for July 22, 2008.

On July 22, 2008, petitioner appeared for his hearing but requested an adjournment to obtain counsel. The adjournment was granted and the hearing was rescheduled for September 3, 2008.

On September 3, 2008, petitioner appeared *pro se* explaining that he could not acquire counsel. At the hearing, Housing Assistant Rose Davis testified on behalf of respondent. During her testimony, NYCHA Affidavits of Income for the Premises for the years 2003-2007 were submitted into evidence. Petitioner's name appeared as crossed out on the 2006 form and did not appear on any other year. Ms. Davis testified that upon reviewing the 2006 Affidavit of Income, she called Mrs. Middleton and explained the procedure required to add her son to the household. Part of this procedure would include adding petitioner's income to the household for a new rent assessment. Mrs. Middleton explained that she did not want her rent to increase and, therefore, would not seek to add petitioner to the household. Ms. Davis testified that petitioner was never a part of the Premises original family composition.

Petitioner testified that he moved into the Premises some time in 1999 or 2000 in order to care for his mother. He conceded that despite making several requests, his mother never added him to the household for fear of a rent increase.

In a decision dated September 4, 2008, Hearing Officer Arlene Ambert denied

petitioner's remaining-family-member claim. In pertinent part, Hearing Officer Ambert concluded:

[Petitioner] is not a remaining family member as defined by Housing Authority regulations. A tenant who wished to have an additional person join the household on a permanent basis must submit a written request to the development manager and receive written approval for the additional occupant. [Petitioner] did not obtain the written permission of the Housing Authority to reside in the [Premises].

In fact according to [petitioner], [Mrs. Middleton] was not willing to request that he be added onto the family composition so that the rent would not be increased. [Mrs. Middleton] made this decision, and [petitioner] must now abide by the ramifications of [her] decision.

On September 17, 2008, the Housing Authority formally adopted this decision and dismissed petitioner's remaining-family-member claim.

## 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."

Here, Hearing Officer Ambert's decision was neither arbitrary nor capricious. Petitioner has not presented any proof evidencing a meritorious remaining-family-member claim. Both prior to and following his mother's death, petitioner failed to get permission from the Housing

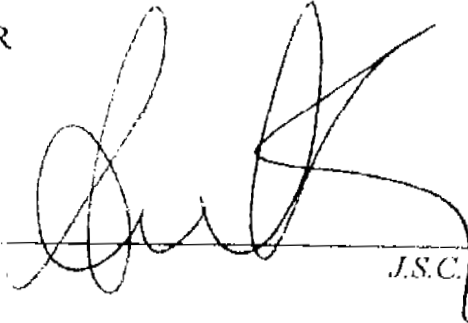
Manager to reside in the Premises. He was not listed as a tenant on any of the Premises' Affidavits of Income. In fact, he conceded that his mother did not want him listed as a tenant so that she could avoid a rent increase. Therefore, the decision by Hearing Officer Ambert was neither arbitrary nor capricious. *Aponte v. NYCIA*, 28 A.D.3d 229 (1<sup>st</sup> Dept 2008) (denial of remaining family member claim affirmed where deceased tenant's income affidavits list her as sole occupant and petitioner did not receive written permission to join household); *Jacobowitz v. NYCHA*, 49 A.D.3d 278 (1<sup>st</sup> 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); *Rodriguez v. Hernandez*, 51 A.D.3d 352, (1<sup>st</sup> 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); *Torres v. NYCHA*, 40 A.D.3d 328 (1<sup>st</sup> Dept 2007) (where petitioner not in compliance with one-year rule, no basis to hold that NYCIA's decision to deny remaining family member claim was arbitrary or capricious); *Jamison v. NYCHA*, 25 A.D.3d 501 (1<sup>st</sup> 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); *see also In re Vincente Rivera v. NYCHA*, NYLJ, Mar. 19, 2009,

at 35, col 3 (article 78 dismissed where petitioner not remaining family member since he was not listed on income affidavit and never received permission 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

  
J.S.C.

DATE: March 25, 2009  
New York, NY

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be given based hereon. To obtain entry, counsel or petitioner must appear in person at the County Clerk's Office (Room 1418).