

Degraffenreid v New York City Hous. Auth.
2010 NY Slip Op 30078(U)
January 13, 2010
Supreme Court, New York County
Docket Number: 111665/07
Judge: Jane S. Solomon
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: JANE S. SOLOMON

PART 55

listing

Index Number : 402123/2009
DEGRAFFENREID, VERNALL
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 1/4/10
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

in this motion to/for _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

3
4-5
6-7

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided in*
a accompanying Decision Order & Judgment.

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

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: 1-13-10


JANE S. SOLOMON .S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X

VERNALL DEGRAFFENREID,

Index No.: 111665/07

Petitioner,

DECISION, ORDER and
JUDGMENT

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

-against-

NEW YORK CITY HOUSING AUTHORITY
ST. NICK HOUSING,

Respondent.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, removal or withdrawal representative must
appear in person at the Judgment Clerk's Desk (Room
1418) S.

-----X

JANE S. SOLOMON, J.:

Pursuant to Article 78 of the Civil Practice Law and
Rules, Petitioner Vernall Degraffenreid challenges the
determination of the New York City Housing Authority (NYCHA) that
he does not qualify to succeed to his mother's public housing
lease as a remaining family member. The NYCHA found Petitioner
ineligible as a remaining family member due to his refusal to
relocate to a smaller apartment as required by NYCHA policy.

Petitioner's mother, Annie Degraffenreid, was the
tenant of record at 277 West 127th Street, Apartment 4H, in the
St. Nicholas Houses in Manhattan. The apartment has five rooms
and three bedrooms. The lease provides that the tenant agrees to
abide by the applicable laws, regulations, and to transfer to an
appropriately sized apartment consistent with NYCHA regulations
based on family composition (Answer, Ex. E).

Petitioner joined the household as an authorized occupant of Apartment 4H on September 4, 2001. Annie Degraffenreid died on August 11, 2008, leaving Petitioner as the only authorized occupant of the apartment.

On September 15, 2008, Petitioner requested remaining family member status, which would permit him to receive a lease in his own name. On November 24, 2008, Petitioner met with the development Housing Manager, and was told he would be required to transfer to a smaller apartment to be eligible for a lease. Petitioner refused a transfer, and his request for a lease was denied.

In October 2008, Petitioner submitted a Permanent Permission Request form seeking permission for his adult son Jamar to reside in the apartment as a family member; permission was denied in December 2008. In January 2009, Petitioner submitted a Permanent Permission Request form seeking permission for his adult son Kamal to reside in the apartment as a family member; permission was denied in March 2009. In both cases, permission was denied because Petitioner was not the named tenant on the lease.

Petitioner appealed NYCHA's denial of his request for a lease as a surviving family member to the Manhattan Borough Management Office, which affirmed the Housing Manager's denial. Petitioner appealed this determination to the NYCHA Office of the

Impartial Hearings, which denied his grievance after a hearing, finding that Petitioner failed to satisfy the requirements to show his entitlement to a lease as a remaining family member, including the requirement that he move to an appropriate sized apartment (Answer, Ex. T). This Article 78 petitioner ensued.

The standard of review for an Article 78 proceeding is whether the agency determination was arbitrary or capricious or affected by an error of law (*Matter of Colton v. Berman*, 21 NY2d 322 [1967]). The NYCHA has adopted occupancy standards as required by federal regulation (24 C.F.R. §§ 960.257 [a] & [c]). The Department of Housing Applications Manual lists the appropriate size apartments for families in the Public Housing Program (Chapter V[B][1]). Three-bedroom apartments are appropriate only for five person families and some four person families. An appropriate size apartment for a single person family is either a "zero" bedroom (studio) apartment or a one-bedroom apartment. NYCHA's Management Manual states that "if a remaining family member is determined eligible for an Authority lease, (s)he must transfer to an apartment of an appropriate size" (Chapter IV-Occupancy, Subdivision IV-Changes In Family Composition, J[1]).

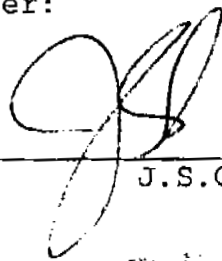
Here, Petitioner was the sole occupant of record in Apartment 4H when his mother died. Petitioner may have been entitled to a lease for a NYCHA apartment as a remaining family

member, but he was not entitled to the three bedroom apartment occupied by his mother, and he did not become entitled to the apartment by inviting other family members to fill the empty bedrooms. NYCHA's determination was rational and in accordance with applicable policies and regulations. Therefore, it hereby is

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

Dated: January 13, 2010

Enter:



J.S.C.
JANE S. SOLORZANO

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).