

Fahie v New York City Hous. Auth.

2010 NY Slip Op 30159(U)

January 22, 2010

Supreme Court, New Now York County

Docket Number: 402806/2009

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 402806/2009

FAHIE, REALDALIS

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1-2

3-4

5-6

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *petition is determined by the*
approval decision order and 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: 1-22-10


JANE S. SOLOMON J.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: PART 55

-----x
REALDALIST FAHIE,

Petitioner,

Index No.: 402806/2009

-against-

DECISION, ORDER and
JUDGMENT

NEW YORK CITY HOUSING AUTHORITY, TAFT
REHAB HOUSES and NEW YORK STATE
DIVISION OF HUMAN RIGHTS

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, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
1415).

JANE S. SOLOMON, J.

Petitioner pro se, Realdalist Fahie (Fahie), brings this Article 78 proceeding against Respondents, New York State Division of Human Rights (NYSDHR), Taft Rehab Houses, and New York City Housing Authority (NYCHA). Fahie challenges NYSDHR's determination of no probable cause and the resulting dismissal of his discrimination complaint, and NYCHA's determination of his status as a single-person family. The petition is denied for the following reasons.

BACKGROUND

Fahie is presently a tenant in a studio apartment at Ingersoll Houses, an NYCHA building. On September 29, 2006, Fahie applied for an NYCHA apartment for himself and his father. At his eligibility interview, on July 25, 2008, Fahie signed an Affidavit of Family Composition stating that he sought a one person apartment, and that his father would not live with him

(Answer, Ex. F). Fahie was put on a waiting list for a studio apartment on October 21, 2008. He received written notice of such on November 7, 2008. In February 2009, Fahie filed a complaint with the NYSDHR asserting that NYCHA discriminated against him because they had not offered him an apartment due to his race (black), disability (blind), marital status (single), national origin and gender. NYSDHR investigated and determined that there was no probable cause to believe that NYCHA discriminated against Fahie.

On October 1, 2009, NYCHA placed Fahie in a studio apartment in Ingersoll Houses. Fahie signed the lease and moved in on October 22, 2009. Fahie's father was ineligible to reside in the apartment. On November 5, 2009, Fahie filed the instant proceeding.

DISCUSSION

Fahie makes multiple challenges. First, he challenges NYCHA's determination of his family composition as a "single-person family" because he initially applied for a two-person apartment in 2006. Second, he challenges NYSDHR's determination because "it does not support the facts of the case" (Petition, p.1). Finally, he claims that repair workers are venting toxic gasses into his apartment, which makes him ill.

To the extent that the petition is a challenge to Fahie's family composition status, Respondents argue that the

petition is time barred because the statute of limitations on an Article 78 petition is four months after the administrative determination to be reviewed becomes final and binding (CPLR 217[1]; *Best Payphones, Inc. v. Department of Info. Tech. & Telecom. Of City of N.Y.*, 5 NY3d 30, 32-34 [2005]). Fahie received notice that he was on a waiting list for a "zero bedroom" studio apartment on November 7, 2008 (Answer, Ex. H). This petition was not filed until November 5, 2009, well after the four month statute of limitations. Furthermore, Fahie's Affidavit of Family Composition (Answer, Ex. F) states that he was to be the sole resident of the apartment. According to the NYCHA guidelines, an appropriate size apartment for a single person family is either a "zero" bedroom studio apartment or a one-bedroom apartment. Therefore, NYCHA's determination was made pursuant to its guidelines and was neither arbitrary nor capricious (see generally, *Matter of Colton v. Berman*, 21 NY2d 322 [1967]). Fahie's argument that he never signed the Affidavit is belied by the evidence (Answer, Ex. F).

To the extent that the petition is a challenge to the NYSDHR Determination, Respondents argue that the determination of no probable cause was not arbitrary or capricious. Fahie argues that the NYCHA places families with children in apartments before it will place single and disabled individuals, which constitutes discrimination.

A determination of no probable cause will not be set aside unless it is found to be arbitrary or capricious (Matter of Albert v. Beth Israel Medical Center, 230 AD2d 695, 697 [1st Dept, 1996]). The NYSDHR investigation found that Fahie did not compete for an apartment with families with children, and that he had not been offered an apartment at the time of his petition because other applicants with the same housing priority had been on the waiting list for a longer amount of time (Answer, Ex. 4). Therefore, NYSDHR found no probable cause that Fahie was discriminated against. This determination is not arbitrary or capricious.

Finally, Fahie's claim that repair workers are venting toxic gas into his apartment was not raised in the underlying administrative proceedings, and does not provide a basis for upsetting the agency's determination.

Accordingly, it hereby is

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

Dated: January 22, 2010

ENTER:



J.S.C.

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
 1510).

SOLOMON