

Matter of Thompson v New York City Hous. Auth.

2010 NY Slip Op 31019(U)

April 21, 2010

Sup Ct, NY County

Docket Number: 401015/09

Judge: Joan M. Kenney

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

PRESENT: JOAN M. KENNEY

PART 8

Index Number : 401015/2009

THOMPSON, SHIRELL

VS.

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 087

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

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

MOTION IS DENIED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

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 1419).

Dated: 4/21/10

Joan M. Kenney
J.S.C.

Check one: FINAL DISPOSITION

JOAN M. KENNEY
NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 8

-----X
In the Matter of the Application of

SHIRELL THOMPSON,

Petitioner,

Index No. 401015/09

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

DECISION, JUDGMENT
& ORDER

- against -

NEW YORK CITY HOUSING AUTHORITY

Respondent

-----X
KENNEY, JOAN, M., J.S.C.

For Petitioner:
Shirell Thompson, *Pro Se*
70 East 108th Street, Apt. 11C
New York, New York 10029

For Respondent:
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NYCHA - 250 Broadway, 9th Floor
New York, New York 10007
(212) 776-5092

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
41B).

In this Article 78 proceeding, petitioner Shirell Thompson seeks a judgment vacating a determination, dated December 31, 2008, made by respondent, the New York City Housing Authority (NYCHA), which dismissed her grievance seeking succession rights, as a remaining family member, to an apartment formerly leased to her late father, Gus Thompson.

The parties' submissions reveal the following facts: Petitioner filed a grievance with respondent's project manager seeking "remaining family member status," and a lease to apartment 11C (the apartment) at 70 East 108th Street, New York, New York, in the Lehman Village Houses. The apartment had been leased to petitioner's father until his death in March 2008. Petitioner claimed that she was an original member of the household that

occupied the apartment; that she temporarily vacated the apartment; and returned to the apartment several years before her father's death.

On June 19, 2008, respondent's project manager for Lehman Village Houses notified petitioner that she was not eligible for "remaining family member status," because she had not maintained continuous residency in the apartment, and her father had not requested permission for her to return to the household (see Project Grievance Summary, Answer, Exh J). Dissatisfied with the disposition, petitioner sought a review of her grievance by NYCA's Borough Management. Borough Management agreed with the determination of the project manager (see District Grievance Summary, Verified Answer, Exh L). Thereafter, petitioner appealed to a hearing officer.

At a hearing held on December 17, 2008, Housing Assistant Heidi Crawford testified that the rent ledger card indicated that the use and occupancy for the apartment was in arrears; that the total amount due was \$4,534.74, at a rate of \$496.60 per month; and that the last payment was received on March 5, 2008 (Transcript, Verified Answer, Exh Q, pp. 15-16). The hearing officer stated on the record that "for [her] to be able to move forward on the merits of the case ... [she] must first establish that use and occupancy [are] up to date (*id.*, p. 9). Petitioner did not deny that she owed use and occupancy, and the hearing officer noted that there

had been an adjournment for about six or seven weeks while petitioner sought public assistance (*id.*, pp. 11, 17). The hearing officer dismissed the petition for lack of jurisdiction because the use and occupancy for the apartment was not current (Disposition, Verified Answer, Exh S). By Determination, dated December 31, 2008, respondent confirmed the hearing officer's decision and disposition, dismissing the grievance (Determination, Verified Answer, Exh T). This petition ensued.

The rules contained in respondent's Management Manual require that persons seeking "remaining family member status," must be current in use and occupancy, in order to have standing to have a hearing (see Manual, Verified Answer, Exh D, at E[1][c][2][c]). "[P]ersons claiming the rights of a remaining family member are entitled to a grievance hearing if they make a 'reasonable showing' that they are in the apartment with the knowledge or permission of the respondent, and continue to pay 'use and occupancy' after the tenant's death" (*Henderson v Popolizio*, 76 NY2d 972, 974 [1990], quoting NYCHA Management Manual, subd. E).

Judicial review of respondent's determination is limited to whether the determination was warranted on the record, has a rational basis in law, and is neither arbitrary nor capricious (see *Greystone Mgt. Corp. v Conciliation & Appeals Bd. of City of N.Y.*, 94 AD2d 614, 616-617 [1st Dept 1983], *affd* 62 NY2d 763 [1984]). A practical test is whether the proof is "so substantial that from it

an inference of the existence of fact found may be drawn reasonably" (300 Gramatan Ave. Assocs. v State Division of Human Rights, 45 NY2d 176, 181 [1978]).

Here, the Court concludes that respondent's determination is neither arbitrary nor capricious, and has a rational basis in the law and the record. The record contains substantial evidence to support respondent's determination that petitioner was not current with her use and occupancy payments at the time of the hearing, thus warranting the dismissal of the grievance on procedural grounds.

Accordingly, petitioner's request to vacate respondent's determination is denied and the petition is dismissed. Accordingly it is,

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondent.

This constitutes the decision and judgment of this court.

Dated: April 21, 2010

E N T E R :

HON. JOAN M. KENNEY
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 1418).