

Matter of Jungreis v New York City Hous. Auth.
2010 NY Slip Op 31213(U)
May 13, 2010
Supreme Court, New York County
Docket Number: 400484/2010
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Joan B. Lobis
Justice

PART 6

Index Number : 400484/2010
JUNGREIS, MORDECHAI
VS.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 4/27/10
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

in this motion to/for _____

PAPERS NUMBERED
1-1-1
72-31
32-33

NOTICE OF ~~motion~~ ^{petition} / 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

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).

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

Dated: 5/13/10 _____ Jh
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
In the Matter of the Application of
MORDECHAI JUNGREIS,

Petitioner,

Index No. 400484/10

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

Decision and Order

- against -

NEW YORK CITY HOUSING AUTHORITY

Respondent.
-----X

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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).*

JOAN B. LOBIS, J.S.C.:

Petitioner Mordechai Jungreis, proceeding pro se, brings this special proceeding pursuant to Article 78 of the C.P.L.R., seeking to reverse the determination of the New York City Housing Authority ("NYCHA" or the "Authority"), dated November 17, 2009, finding petitioner and his wife, Frimie Jungreis, ineligible for a rent subsidy under Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f), commonly referred to as a "Section 8" subsidy. After an informal hearing on September 14, 2009, Hearing Officer Edward Robinson determined that petitioner and his wife are ineligible for a Section 8 subsidy because they did not present sufficient objective evidence to prove that they did not misrepresent their address. Based on the foregoing, the petition is granted to the extent of remanding this matter back to the Authority.

On or about January 21, 2004, Mrs. Jungreis applied for Section 8 housing assistance on behalf of herself and her husband. On the application, she listed their "home address" as a "shelter" at 158 Hooper Street in Brooklyn, and that they had lived there since November 2003. A second "home address," described as a "synagogue" at 118 Lee Avenue in Brooklyn, was added to

the application at some point. A third address, identified as a mailing address and described as "Beth Shlomo" at 199 Lee Avenue, PMB 402 in Brooklyn, was also added to the application at some point. It is unclear at what point during the application process these two other addresses were added to the application. Their son, Moshe, was added to the application after he was born in January 2005. The application indicates that petitioners were not paying any rent for their living space. They described the space where they lived as having a toilet and windows, but no bathroom and no central heat. The application states, "We have no cooking, bathing, private facilities & No Privacy. We don't have a chest or closet for clothing & shoes." Mrs. Jungreis was the only person in the household listed on the application as employed; she was working as a homecare nurse for \$130 per week.

At some point during the application process, petitioner had also submitted letters to the application office from representatives of the synagogue. The letters, dated January 21, 2003 from Moses Mandel, "Sec.", and March 19, 2007 from Zindel Binik, Vice President, are both on letterhead stating "Cong. Kehilath Beth Shlomo, 118 Lee Avenue, Brooklyn N.Y. 11211." Both letters state that petitioner and his wife (and in the later letter, their son) reside rent free at the congregation located at 118 Lee Avenue. A third letter submitted to the applications office, dated December 1, 2007, is from Robert Lefkowitz at Kollel Match Efraim, at 5610 13th Avenue in Brooklyn. The letter states that petitioner resides at 118 Lee Avenue in Brooklyn and is a "full time student in our school."

The Section 8 Eligibility Interview Record ("Interview Record") indicates that petitioner and his wife were interviewed on March 23, 2007. The Interview Record indicates that

the petitioner and his wife reported their address as 118 Lee Avenue in Brooklyn. The applicants submitted a marriage certificate indicating that they were married on November 26, 2003. They reported that they resided in a shelter in a synagogue. They did not have any lease to submit and they paid no rent. The Interview Record shows that they were applying for a "Code 2" priority. The Interview Record lists five possible categories of priority determinations, described as codes 0, 1, 2, 5, and 9. Applicants designated code 0 or 1 are the most needy applicants with the highest preference for housing assistance, and applicants designated code 9 are entitled to no preference. Code 2 is a priority determination in the middle, including applicants who are living in shelters or on the streets, living in substandard housing, mobility impaired and living in inaccessible housing, living in overcrowded housing, involuntarily displaced, or with a significant rent hardship.

After petitioner's interview, NYCHA sought to verify petitioner's application. Based on the date of the letter from Moses Mandel, NYCHA sought to verify that the family had been residing at a synagogue since at least January 2003, even though the application was not made until January 2004 and petitioner had reported living at the synagogue only since November 2003. NYCHA's search of the relevant public benefits records revealed that petitioner received food stamps from March 2003 through February 2004 on his parents' budget at his parents' address, 1527 39th Street in Brooklyn, and that Mrs. Jungreis had an active Medicaid case from May 2003 through July 2004 at the address of 190 Wilson Street in Brooklyn. NYCHA also obtained a "Notice of Property Value" report that identified 118 Lee Avenue, the address given for the synagogue, as a "non-residential unit" but not as a house of worship. Based on these records, NYCHA concluded that petitioner misrepresented his residence in order to increase his eligibility priority. NYCHA

informed petitioner by letter dated November 17, 2008, that he and his family did not meet the standards for admission to Section 8 housing due to misrepresentation. The letter set forth that NYCHA's investigation revealed several other addresses for the family besides the 158 Hooper Street address in Brooklyn, including 1527 39th Street and 190 Wilson Street in Brooklyn. Petitioner was informed that he was ineligible for Section 8 housing until November 17, 2011. The letter also informed petitioner of his right to request an informal hearing.

On or about January 5, 2009, petitioner submitted a request for an informal hearing, together with a letter from Mrs. Jungreis. The letter states that she had lived at her grandmother's house and petitioner had lived at his mother's house until they got married on November 26, 2003. After they were married, they then began living together at the congregation Kehileth Beth Shlomo, because they had no place to live together in her grandmother's house or his mother's house.

Petitioner appeared, with counsel, for his informal hearing on September 14, 2009. The Authority maintained that petitioner had misrepresented his address, because while petitioner claimed, at the time of the application in January 2004, that he and his family were residing at 158 Hooper Street in Brooklyn, NYCHA's investigation revealed several other addresses for them, including 118 Lee Avenue, 1527 39th Street, 190 Wilson Street, and 199 Lee Avenue PMB # 402 (all in Brooklyn). Petitioner maintained that he and his family¹ had lived at 118 Lee Avenue in Brooklyn since he and his wife married in November 2003. He stated that his mailing address is 199

¹ At this point in the process, petitioner and his wife had two children, their son Moshe (age 4 years) and a daughter Brucha (age 10 months).

Lee Avenue PMB # 402 in Brooklyn. Petitioner submitted a Department of Buildings Certificate of Occupancy for the building premises at 158 Hooper Street in Brooklyn and a copy of a New York City Buildings Property Profile Overview that indicates that 118 Lee Avenue and 158 Hooper Street are the same address. Petitioner's wife stated that her mailing address is 199 Lee Avenue PMB # 402 in Brooklyn, and that she receives her important mail at this address. She submitted (1) an undated letter from Lee Avenue Shipping & Communications setting forth that the congregation has a mailbox at their location, 199 Lee Avenue PMB # 402; (2) a copy of a State of New York Department of Taxation and Finance Income Tax Return check addressed to Mordechai and Frimie Jungreis at 199 Lee Avenue 402/Shlomo in Brooklyn, dated April 1, 2004; (3) a notarized "Certificate of Incorporation of Kehilath Beth Shlomo" dated June 30, 1987, indicating that Kehilath Beth Shlomo at 51 Ross Street in Brooklyn is a House of Worship as defined by Article X of the Religious Corporations Law; (4) a notarized document indicating that the deed for the above facility was transferred to 118 Lee Avenue on or about December 3, 1991; and (5) a letter dated July 18, 1993, from the New York City Department of Environmental Protection addressed to Kehilath Beth Shlomo at 118 Lee Avenue in Brooklyn.

Mrs. Jungreis stated that she did receive Medicaid at her grandmother's address, 190 Wilson Street in Brooklyn, until July 2004. Mrs. Jungries did not submit any verification from New York City's Human Resources Administration ("HRA") indicating that HRA knew that Mrs. Jungries was residing at the congregation address by January 2004. She stated that she attempted to change her address for Medicaid purposes in December 2003 or January 2004, but HRA did not change her address, rather, it only changed her maiden surname to her married surname. Petitioner

stated that he did receive food stamps on his parents' HRA budget until February 2004 (three months after he was married and had moved out). Mr. Jungreis submitted no verification that HRA was aware that he was living at the congregation by January 2004 when he applied for Section 8 housing.

In a determination dated November 17, 2009, the Hearing Officer who presided over the informal hearing found that the Authority made an appropriate determination based on Federal Housing Regulations. Petitioner's family's case was made ineligible because the Authority's investigation determined that he and his wife submitted documentation that misrepresented their eligibility preference for admission to Section 8 housing. The Hearing Officer found that they did not submit sufficient objective documentation to contradict the Authority's findings, and sustained the Authority's original determination of ineligibility for Section 8 assistance. This petition to challenge the Authority's determination followed.

Petitioner maintains that the Authority's determination to find him ineligible for Section 8 housing based on his and his wife's failure to submit documentation from HRA regarding their respective efforts to change their address for Medicaid benefits was arbitrary and capricious. He contends that this documentation is unavailable and impossible to obtain. He also maintains that the other reasons for the initial denial of their Section 8 application were refuted at the informal hearing. Together with the petition, petitioner submits three new letters that were not submitted at the informal hearing and were not part of the underlying record, that support petitioner's claim that they have resided at 118 Lee Avenue since November 2003; however, these letters may not be considered in the court's review of this application because judicial review of an agency's

determination is limited to the administrative record. Rizzo v. New York State Div. of Hous. & Cmt. Renewal, 6 N.Y.3d 104, 110 (2005).

The Authority, in answering the petition, maintains that the Authority's determination was rational, and not arbitrary and capricious. NYCHA contends that it is "implausible" that petitioner and his family have been residing at a synagogue since 2003, and contends that it is "more likely" that petitioner misrepresented his address in order to obtain a higher priority status code of 2. The Authority asks the court to reject petitioner's claim that he has lived at a synagogue since 2003 because it is incredible and not supported by the record. NYCHA's position is that petitioner was unable to submit HRA documentation about his and his wife's change of address because such documentation does not exist; that the HRA documentary evidence revealed that they received benefits at a location other than their claimed address at the synagogue; and that the synagogue provided false information in its January 2003 letter in which it was stated that petitioner and his wife lived at the synagogue.

In reply, petitioner submits a new, notarized letter from Moses Mandel, the synagogue representative who wrote the "January 2003" letter stating that petitioner and his wife reside at the synagogue. Mr. Mandel states that the Jungreises moved to the congregation on November 26, 2003, and that he wrote this letter on January 21, 2004, but he mistakenly dated the letter with the "year 2003 as appose [*s/c*] to year 2004 which is a common error in the beginning of the year." Petitioner's affidavit also attempts to clarify certain issues. With respect to the HRA records conflicts, petitioner replies that he and his wife testified that they made applications early on to

change their respective addresses with HRA after they married, but that it took months for HRA to effect the changes. As to the Authority's argument that petitioner's claim that they have lived in a synagogue without a shower or bath since 2003 is "implausible," petitioner replies that it is preferable to stay in a shelter, rather than in overcrowded conditions with parents or grandparent, even without certain amenities in the shelter.

In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether that administrative decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified * * * and whether the administrative action is without foundation in fact.'" Id. (citation omitted). A determination is considered "arbitrary" when it is made "without sound basis in reason and is generally taken without regard to the facts." Id. The administrative determination must be supported by some credible evidence. In re Goldman v. NYCHA, 18 Misc. 3d 1102(A) (N.Y. Sup. Ct. 2007); See also In re Guzman v. Safir, 293 A.D.2d 281 (1st Dep't 2002), lv. denied 98 N.Y.2d 614 (2002). The court "may not . . . choose between conflicting proof . . . or substitute its assessment of the evidence or witness credibility for that of the administrative fact finder." In re Porter v. New York City Housing Authority, 42 A.D.3d 314 (1st Dep't 2007).

NYCHA's rules regarding Section 8 applications are established from federal legislation and from regulations issued by the United States Department of Housing and Urban

Development. Applicants must provide proof of their current residence. According to the exhibit attached to NYCHA's papers, applicants who provide conflicting accounts of their previous or current residence are ineligible for two years from the date they are declared ineligible, and applicants who misrepresent their current or previous residence are ineligible for three years from the date they are declared ineligible.

The Hearing Officer's determination sustained the Authority's original determination of ineligibility for Section 8 assistance. However, that original determination was based on the Authority's finding that petitioner and his wife never resided at 158 Hooper Street (the address on petitioner's January 2004 application), and the Authority's finding that 118 Lee Avenue was not a house of worship. Both of these findings were resolved by documentary evidence provided by petitioner at the informal hearing, showing that 158 Hooper Street and 118 Lee Avenue are two alternate addresses for the same physical location, and that situated at that physical location is the congregation Kehilath Beth Shlomo. Thus, the Hearing Officer's finding that petitioner and his wife did not submit sufficient objective documentation to contradict the original determination is without regard to the facts. It was arbitrary and capricious to sustain the Authority's original determination when the basis for that original determination was sufficiently resolved by documentary evidence at the informal hearing. It was also arbitrary and capricious to sustain the original punishment of three years' ineligibility based on a finding of misrepresentation, as opposed to considering the lesser punishment of two years' ineligibility for presenting conflicting accounts of the applicants' residence, because the finding of misrepresentation and corresponding penalty was based on the Authority's inability to verify 158 Hooper Street as the applicants' residence. The lesser punishment was never explored.

Accordingly, it is hereby

ADJUDGED that the petition is granted to the extent that the determination of the Hearing Officer, dated November 17, 2009, to sustain the original determination of ineligibility for Section 8 assistance based on petitioner's misrepresentation of his current address is vacated; and it is further

ORDERED that this matter is remanded to respondent for a new hearing consistent with this decision, order, and judgment, including consideration of a penalty other than three years' ineligibility.

This constitutes the decision, order, and judgment of the court.

Dated: May 13, 2010



JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT

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