

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

2010 NY Slip Op 31957(U)

July 15, 2010

Supreme Court, New York County

Docket Number: 402524/09

Judge: Joan A. Madden

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

PRESENT: JOAN A. MADDEN  
Justice

PART 11

Matter of Stephanie Zeleny  
Carrión  
Plaintiff,  
New York City Housing Authority  
Defendant.

INDEX NO. 402524/09  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
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
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion *is consolidated with motion sequence no. 002 for determination, and the consolidated motions are determined in accordance with the annexed decision, order and judgment.*

**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: July 15, 2010

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 11.

-----X  
In the Matter of the Application of STEPHANIE ZELENY  
CARRION,

Petitioner,

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

-against-

Index № 402524/09

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X  
JOAN A. MADDEN, J.:

In this is an Article 78 proceeding, pro se petitioner Stephanie Zeleny Carrion (Zeleny Carrion) seeks, under motion sequence 001, to annul the determination of respondent New York City Housing Authority (NYCHA), dated May 26, 2009, which denied her request for remaining-family-member succession rights to apartment 9H at the Lillian Wald Houses located 920 East 6<sup>th</sup> Street, New York, New York (the apartment).<sup>1</sup>

The following facts are not disputed unless otherwise noted. Zeleny Carrion is the surviving spouse of Raymond Carrion (R. Carrion), the tenant of record for the apartment since February 1, 2004. Petitioner and R. Carrion were married on June 9, 2006,<sup>2</sup> and R. Carrion died sixteen days later on June 25, 2006. On or about July 7, 2006, Zelany Carrion filled out a

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<sup>1</sup>Under motion sequence 002, petitioner sought a stay of NYCHA's eviction proceedings instituted in Civil Court of the City New York, Housing Part, under Index No. 15066/08, pending resolution of her Article 78 petition. On February 11, 2010, this court issued an interim order granting the stay "pending the hearing of this petition." According to counsel for respondent, on February 17, 2010, the Housing Court proceeding was "marked off" pending the resolution of this Article 78 proceeding. Motions 001 and 002 are consolidated for disposition.

<sup>2</sup>June 9, 2006 is the date that appears on the marriage certificate. In her petition, Zeleny Carrion misstates the date of her marriage as June 25, 2006, and the petition in the prior proceeding, misstates the date as June 22, 2006.

NYCHA form entitled "Permanent Permission Request for a Family Member/Additional Person to Live with a Project Tenant," listing R. Carrion as the "Tenant," herself as the "family member/additional person," her relationship to the tenant as "wife," and her occupation as "child care." In the space provided for the "reason for requesting admission to project apartment," Zelany Carrion wrote, "I am married to Mr. Carrion." Her signature appears in the space provided for the "additional person's signature" and in the space provided for the "tenant's signature," she wrote "deceased." In February 2007, Zelany Carrion submitted an income affidavit listing herself as the only "person occupying the apartment."

By letter dated March 12, 2007, the management office responded to petitioner's remaining family member claim by notifying her that she was entitled to a grievance procedure. By letter dated March 26, 2007, petitioner replied that "as the wife of the late Mr. Carrion . . . [I am] submitting this Grievance letter to consider me as his wife to keep residing at the apartment . . . [in] which I resided with Mr. Carrion for the past 2 years." In the letter, petitioner stated that she and R. Carrion were married on June 6, 2006, and "I had to leave my job and residence in New Jersey to take care of Mr. Carrion [who] was very ill . . . I provided domestic and medical care which he needed [and] took care of him when was admitted to the hospital in March of 2006."

On April 16, 2007, petitioner met with Housing Manager Mark Wittek to discuss her remaining family member grievance. On April 17, 2007, the Housing Manager issued a recommendation to deny the grievance, explaining as follows:

Ms. Stephanie Zelany Carrion is the wife of tenant of record Mr. Raymond Carrion, who died on June 25, 2006. She claims that she lived with Mr. Carrion for two years. She says that they were married on June 9, 2006. She is now

seeking to get the apartment as a remaining family member. Ms. Stephanie Zelany Carrion is not an authorized an authorized member of the household. Mr. Carrion never requested permanent permission for Ms. Carrion to join the household and she is not listed on any of the annual review papers. She is therefore not qualified as a RFM [remaining family member].

The Housing Manager forwarded the grievance to the District Office for review, and petitioner was notified that she could submit additional documentation or schedule a personal interview with Borough Management. On July 12, 2007, petitioner met with Borough Director/Manager Camilla Kmiec, who issued a determination upholding the Housing Manager's recommendation to deny the grievance. As her findings and reasons, Kmiec stated the following:

On July 12, 2008, I held a remaining family member grievance interview with Stephanie Carrion. A review of the record shows that the former tenant of record, Raymond Carrion who was the sole occupant of this two room apartment through his tenancy from January 2004 until he passed away on June 25, 2006. Stephanie Carrion married Raymond Carrion on June 22, 2006 [sic], and is requesting residual status until April 30, 2008. At that time Stephanie Carrion will be able to return to her apartment located at 319 East 69<sup>th</sup> Street, West New York, New Jersey, that she is currently subleasing. However, Stephanie Carrion is not an original member of this household nor did Raymond Carrion request and/or obtain management's written permission for her to join the household. Consistent with GM3692 Amended, Occupancy and Remaining Family Member Policy Revisions, permanent permission for occupancy may be acquired only upon the written approval of the Housing Manager. Therefore, I concur with the Housing Manager, Mark Wittek's decision and disapprove Stephanie Carrion's request for remaining family member consideration.

Petitioner thereafter requested a grievance hearing that was held in January 2008, and petitioner appeared pro se. In February 2008, the hearing officer denied the grievance and NYCHA's board adopted the hearing officer's decision. Zelany Carrion commenced an Article 78 proceeding under Supreme Court, New York County Index No. 401367/08, which was resolved by a stipulation, pursuant to which NYCHA agreed to vacate its February 20, 2008 determination, and to grant petitioner a de novo hearing on condition that she remain current in

her payment of use and occupancy.

On May 12, 2009, a de novo hearing was held before Hearing Officer Joan Pannell. Petitioner was represented by counsel and testified on her own behalf. Housing Assistant Priti Chattergee testified for NYCHA. On May 26, 2009, the hearing officer issued a decision denying petitioner's grievance. Specifically, as to NYCHA's evidence, the decision states that NYCHA's records "show that the former tenant [R. Carrion] was the only authorized occupant of the apartment," the "most recent annual affidavits of income and family composition dated 1/05 and 12/05, listed only himself as an occupant," and that the "latter listed Grievant [Zelany Carrion] as an emergency contact at a different address." The decision notes that "Housing Assistant Priti Chattergee testified that management had not accorded permission for Grievant's residence and in fact was unaware of her presence until after the tenant's death, when it learned that Grievant and the tenant had married on 6/9/09." As to petitioner's evidence, the decision states as follows:

Grievant [Zelany Carrion] testified that she moved into the apartment in about mid-'05 to care for the tenant, who had a number of medical conditions. It was Grievant who filled out the tenant's annual affidavits; she did not list herself as an occupant because management told her it was unnecessary: she was not in the apartment full-time because she was also living in an apartment in New Jersey caring for another person, and because she was not yet married to the tenant. She did not obtain a certificate of domestic partnership. She did not have documents such as tax returns to show her residence, because she was paid "off the books."

Based on the forgoing, the hearing officer made the following findings and conclusion:

Grievant [Zelany Carrion] did not show that permission was obtained for her residence. Indeed, management could not have accorded permission for Grievant's residence in the one bedroom apartment until it was determined that she was a domestic partner. Accordingly, Grievant is not a residual tenant as defined by NYCHA's regulations.

By letter dated June 10, 2009, NYCHA by its Secretary, notified petitioner that it was “approv[ing] the Hearing Officer’s decision and disposition in this proceeding denying the grievance.”

On October 7, 2009, petitioner commenced the instant Article 78 proceeding, asserting that NYCHA’s denial of her grievance as a remaining family member of R. Carrion is arbitrary and capricious. Specifically, the petition asserts as follows:

[B]efore our marriage on 06.09.06, we were living as domestic partners Nov. 2005. Mr. Carrion went down to the management office to add my name into the family composition. Mr. Anderson<sup>3</sup> the Housing Manager at that time took all the information and told us that he needs to do a background check before he can add my name into the household. Two weeks passed I called the office and spoke to Mr. Anderson. [He] asked me to wait for his call. At that time Mr. Anderson did not give me a copy of my request. Raymond was sick at that time. A few months later, Raymond Carrion was admitted to the hospital. We called Mr. Anderson; he was no longer working at this office. The new Housing Assistant Mrs. Pritti [sic] told us that a lot of paper work was missing. She told us to wait for her call. A couple of months passed and during that time Raymond Carrion was admitted to the hospital and we didn’t make any more followup calls to the management office.

Since I still received no approval to add my name into the household, I was helping to take care of my friend’s mother in New Jersey. Before Raymond Carrion moved into the Project, I worked as a live in attendant. When my friend’s mother passed away in March 2004, I still lived with them until October 2005. I moved back to New York with Mr. Carrion because he got very sick, so I had to take care of him. I was named and authorized as Raymond Carrion’s proxy dated 4/6/06, and our address was listed 920 East 6<sup>th</sup> St., N.Y., N.Y. 10009 Apt. 9H, our residence. On April 25, 2006 I signed paper work with Cabrini Medical Center, that I took care of his personnel [sic] needs. After Mr. Carrion had passed away I informed the management office about his passing away on 06-06 [sic]. I did complete annual income affidavits. I was asked by the management office to request to add my name into the household on 07/06. All these years I was paying the rent in my name. My rent is up to date.

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<sup>3</sup>During the hearing, petitioner testified that she was not sure if the housing manager’s name was Anderson or Erickson. For the purposes of the decision, the housing manager who petitioner or R. Carrion spoke to will be referred to as Anderson.

In opposing the petition, NYCHA asserts that Zeleny Carrion does not qualify as a remaining family member within the meaning of the Housing Authority's rules and regulations. NYCHA argues that Zeleny Carrion did not lawfully enter the household, since the tenant of record, R. Carrion, did not request or obtain written permission for her to join the household during his lifetime; petitioner cannot satisfy the requirement of occupying the apartment for at least one year prior to the tenant of record's death; NYCHA did not implicitly approve petitioner's occupancy; and any alleged mitigating circumstances do not justify an exemption from the eligibility requirements for public housing under the circumstances.

Judicial review of an agency determination is circumscribed by CPLR 7803. The court must not weigh the facts or the merits of petitioner's claims, nor may it substitute its judgment for that of the agency; the court is limited to deciding whether the agency's determination was arbitrary and capricious, or an abuse of discretion, by assessing whether a rational or reasonable basis exists for the agency's determination. See Matter of Pell v Board of Education, 34 NY2d 222 (1974).

Here, NYCHA's denial of petitioner's grievance on the basis that written permission had not been obtained for her to occupy the apartment, was neither arbitrary nor capricious. See Goldman v. New York City Housing Authority, 63 AD3d 532 (1<sup>st</sup> Dept 2009), lv app den 14 NY3d 701 (2010); Matter of Aponte v. New York City Housing Authority, 48 AD3d 229 (1<sup>st</sup> Dept 2008); Chavez v. Hernandez, 22 AD3d 408 (1<sup>st</sup> Dept 2005); McFarlane v. New York City Housing Authority, 9 AD3d 289 (1<sup>st</sup> Dept 2004). The undisputed record establishes that petitioner does not qualify as a remaining family member, as she did not enter the apartment lawfully. It is not disputed that NYCHA never gave R. Carrion, the tenant of record, written

permission for petitioner to join his household, and petitioner admitted no such permission was ever obtained from the project management for her to reside in the subject apartment. See Abreu v. New York City Housing Authority East River Houses, 52 AD3d 432 (1<sup>st</sup> Dept 2008); Matter of Aponte v New York City Housing Authority, *supra*; Jamison v. New York City Housing Authority, 25AD3d 501 (1<sup>st</sup> Dept 2006). The fact that no written permission was ever obtained is further corroborated by R. Carrion's annual income affidavits for the years petitioner allegedly lived in the apartment, in which he listed no occupants other than himself. See See Abreu v. New York City Housing Authority East River Houses, *supra*; Jamison v. New York City Housing Authority, *supra*. The only reference to petitioner is in the income affidavit dated December 2, 2005, which lists Zeleny Carrion as an "emergency contact" at "50 Columbia St." and her relationship as "friend."

Petitioner's assertion that she and R. Carrion were living together as domestic partners is not only contradicted by the income affidavits, but during the de novo hearing, petitioner acknowledged that they did not register with housing management as domestic partners, nor did they take any other steps to register formally as domestic partners, let alone obtain a Certificate of Domestic Partnership Registration by the City Clerk of the City of New York, as required under Appendix to GM-3692 Amended, in order to demonstrate the existence of that type of family relationship. Although petitioner submits a copy of a New York State Identification Card as proof that she resides at 920 East 6<sup>th</sup> Street, apartment 9H, the card was issued on May 19, 2008, which does not establish that she was living in the apartment before or at the time of R. Carrion's death in June 2006. The notarized letters of Vanessa Isaacs and Barbara Klose are equally unavailing. The Isaac letter simply confirms Zeleny Carrion's testimony that she spoke

with Housing Manager Anderson in May 2005 about being added to the lease, and that Anderson said a criminal background check was needed and to let him know when she and R. Carrion were married. The Klose letter states that Zeleny Carrion and R. Carrion “resided together at 40 Avenue B . . . from 1997 to September 2001,” but makes no further reference to petitioner’s living arrangements after that date, particularly in and after February 2004, when R. Carrion first took occupancy of the apartment.<sup>4</sup>

At best, petitioner claims that based on conversations she and/or R. Carrion had with housing manager Anderson in May 2005 and June 2006, and perhaps on other dates, the housing manager was aware that she was residing in the apartment, and knew that R. Carrion wanted to add her to his household and that they were planning to get married. Petitioner alleges that the housing manager told her that it was not necessary to add her at that time, since she was not living in the apartment full-time or “24/7,” and once they were married, they should let him know, because a criminal background check was needed. Petitioner also alleges that she or R. Carrion submitted “paper work” to the housing manager before R. Carrion died, but she did not produce copies of any documents at the hearing or in this proceeding. Notably, Housing Manager Chattergee testified that there were no documents in R. Carrion’s tenant folder indicating that he ever requested permission during his lifetime for an additional person to move into his apartment.

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<sup>4</sup>Even though the identification card and the notarized letters were not part of the record before the agency, the court has considered those documents to the limited extent of finding that they do not lend support to petitioner’s claim to succession rights, and would not have altered NYCHA’s determination denying that claim.

Petitioner asserts that she relied on the housing manager's statements, and also asserts that the housing manager never told her that she need to register as a domestic partner. However, even if NYCHA, through its housing manager, had knowledge of and acquiesced to petitioner's residency in the apartment, NYCHA cannot be estopped from invoking the regulations, and determining that petitioner was not properly added to the household before R. Carrion died. See Matter of Schorr v. New York City Department of Housing Preservation & Development, 10 NY3d 776 (2008); Taylor v. New York State Division of Housing & Community Renewal, 73 AD3d 634 (1<sup>st</sup> Dept 2010); Matter of Edwards v. New York City Housing Authority, 67 AD3d 441 (1<sup>st</sup> Dept 2009); Matter of Hutcherson v. New York City Housing Authority, 19 AD3d 246 (1<sup>st</sup> Dept 2005); Matter of Douce v. New York City Housing Authority, 25 Misc3d 1241 (A) (Sup Ct, NY Co 2009).

Thus, since it is undisputed that written permission was never obtained to add petitioner as an occupant, NYCHA's determination that she was not eligible for remaining-family-member status, was supported by a rational basis, and was not arbitrary or capricious.<sup>5</sup> See Goldman v. New York City Housing Authority, *supra*; Matter of Aponte v. New York City Housing Authority, *supra*.

Accordingly, it is

ORDERED AND ADJUDGED that the petition (motion seq. 001) is denied and the proceeding is dismissed; and it is further

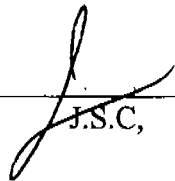
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<sup>5</sup>The court declines to reach the issue raised by respondent as to whether petitioner was in compliance with the one-year occupancy rule. See Abreu v. New York City Housing Authority, *supra*. The agency did not base its determination on that ground, and this court's review is limited to the grounds invoked by the agency. See Scherbyn v. Wayne-Finger Lakes Board of Cooperative Educational Services, 77 NY2d 753 (1991).

ORDERED that to extent the Civil Court Housing proceeding has been stayed during the pendency of this proceeding, such stay is lifted forthwith, and motion sequence number 002 is denied as academic.

Dated: July 5 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 141B).