

Matter of Ramos v New York City Hous. Auth.

2010 NY Slip Op 32927(U)

September 27, 2010

Sup Ct, NY County

Docket Number: 115624/2009

Judge: Joan A. Madden

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: HON. JOAN A. MADDEN

PART 11

J.S.C. Justice

Index Number : 115624/2009

RAMOS, LUIS

VS.

N.Y.C.H.A. LAW DEPARTMENT

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

in this motion to/for _____

PAPERS NUMBERED

notice of motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

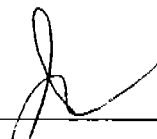
Upon the foregoing papers, it is ordered that this ~~motion~~ *Article 78 petition is determined in accordance with the annexed decision, order and judgment.*

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: September 27, 2010



J.S.C.
HON. JOAN A. MADDEN

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 11

-----X
In the Matter of the Application of LUIS RAMOS and
SERGIO RODRIQUEZ,

INDEX NO.115624/2009

Petitioners,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

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

This judgment has not been entered by the County Clerk and notice of entry cannot be served based on this order. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

In this Article 78 proceeding, pro se petitioners Luis Ramos and Sergio Rodriguez seek to annul the determination of respondent New York City Housing Authority (the Housing Authority) which denied their request for remaining family member succession rights to the apartment occupied by Flor Cupelas; Ramos is Cupelas' son and Rodriguez is her alleged common law husband.

The following facts are not disputed unless otherwise noted. From 1967 to the date of her death on May 29, 2008, Cupelas was the tenant of record of apartment 3A at 2715 3rd Avenue, Bronx, New York, which is part of the Housing Authority complex known as Patterson Houses. While "Luis A." and the first names of three other sons were originally listed on the Tenant Data Summary, a line was crossed through all those names, and a subsequent Tenant Data Summary listed Cupelas as the sole occupant of the apartment. In her annual income affidavits submitted in 2007, 2006 and 2004, Cupelas did not list Ramos or Rodriguez as one of the "persons living in the apartment," and she never requested permission from the Housing Authority to have either

of them permanently added to her household. Also, the 2007, 2006 and 2005 Lease Addendum/Rent Notices list Cupclas the only "authorized member" of her household.¹

On July 24, 2008, Ramos informed management of his mother's death, and claimed that he and Rodriquez were entitled to the apartment as remaining family members. By letter dated July 31, 2008, Ramos requested a grievance hearing on his remaining family member claim. On August 12, 2008, the Housing Authority notified Ramos that the grievance hearing was scheduled for August 20, 2008.

On August 22, 2008, Ramos and Rodriquez met with Project Manager Kimberly Taylor to discuss their grievance. Taylor prepared a Project Grievance Summary concluding that Ramos's and Rodriquez's "request to sign a lease with NYCHA is being denied," as "[n]either party was granted permission to join the household by NYCHA prior to Ms. Cupeles passing away." The Summary explained that Ramos alleged that he "returned to the household 5 years ago," and that Rodriquez alleged that he "returned 8 years ago." As the reasons for the proposed disposition, the Summary stated that a "review of her [Cupeles's] annuals as far back as 1996 list Ms. Cupeles as the only person residing in her home," and that "NYCHA was not aware nor gave consent for them [Ramos and Rodriquez] to be present in the apartment." Taylor also noted that Ramos was receiving deceased pension benefits from his mother in the amount of \$698.22 monthly, and Rodriquez received Social Security in the amount of \$788.30 monthly.

¹Under the section entitled "Family Composition and Occupancy Notice," the Lease Addendum/Rent Notice states as follows: "The following are the names of each authorized member of your household. If any of the persons listed has a child newly born to him or her, legally adopts a child, or is declared by a court to be the guardian of a child, the child may permanently reside in the household if you report the child to the Housing Manager. No other person is permitted to reside permanently in the household unless the Housing Manager grants you WRITTEN PERMISSION to add that person to your household."

The Project Manager forwarded the grievance to the District Office for review. On October 31, 2008, the Borough Manager issued a decision upholding the Project Manager's decision, finding that Ramos and Rodriguez were not eligible to enter into a lease with the Housing Authority for the following reasons:

1. If Luis Ramos and Sergio Rodriguez were living in the apartment, it was without the written permission of the NYC Housing Authority.
2. NYC Housing Authority procedure GM-3692 states that the tenant of record must have obtained permission from Management in writing to allow the remaining family member to reside in the household, one year before he/she died or vacated the apartment.
3. Since Use and Occupancy is paid, grievants may appeal.

Ramos and Rodriguez thereafter requested a grievance hearing, that was first scheduled for February 3, 2009. On February 3, 2009, Ramos requested an adjournment to retain counsel, explaining that he had an appointment with Bronx Legal Services on February 20. Ramos also explained that he needed to leave New York City for work, because he is an actor, and asked for a date during the second week of April. With the consent of the Housing Authority's attorney, the hearing was adjourned to April 14, 2009. The Hearing Officer cautioned that due to the length of the adjournment, "I won't give you more time to get a lawyer."

When Ramos and Rodriguez appeared on April 14, the Hearing Officer asked about their attempt to retain counsel. Ramos replied that he had recently consulted with private counsel, Elba Castro, who advised that she needed a minimum of two weeks to review the case. Over the Housing Authority's objection, the Hearing Officer granted the adjournment, and directed the parties to go off the record and contact attorney Castro about her availability. The parties then agreed to a May 12 date.

On May 12, Ramos and Rodriguez appeared without counsel, and indicated that they

were ready to proceed with the hearing. Ramos and Rodriquez testified on their own behalf, and submitted a Tenant's Rights Guide published by the New York State Attorney General and medical documentation regarding Mr. Rodriquez's heart condition. Ramos testified that the apartment is the home he grew up in and has come back to for about 20 years, and as an actor, he is a positive role model for children in the building and the neighborhood. Ramos testified that Rodriquez was also an asset to the building and the people in the neighborhood. Ramos testified that for the last eight years, Rodriquez was his mother's primary caretaker, that it was Rodriquez's understanding that Cupelas had "taken care of the housing requirement," and that "the management office was aware of Mr. Rodriquez's presence." Ramos explained that Rodriquez would walk his dog and spoke to many people, including the housing assistant, Mrs. Haynes, on many occasions. Ramos also testified that his mother had asked management if Rodriquez could be put on the lease, and she was inaccurately told that it was not possible because she and Rodriquez were not legally married. Ramos said that his mother may have been confused by that information, and therefore did not pursue the claim further. Ramos admitted that Rodriquez was not on the lease, but pointed out that he was on the lease at one time. Ramos offered that he and Rodriquez were willing to make "financial amends" by "mak[ing] up the difference over time of what was owed" for the time Rodriquez was in the apartment but not on the lease, so they could be granted permission to stay. He also asserted that under "similar circumstances," some people have been asked to leave their apartments, and others have been permitted to stay.

Rodriquez briefly testified that he took care of Cupelas during her illness, and that he resided in the apartment for fifteen years, and "never had a problem with anyone there."

Rodriquez submitted a Social Security Disability statement from December 1999 that was addressed to him at the apartment, and medical documentation as to his heart condition.

The Housing Authority presented the testimony of Housing Assistant Yvonne Haynes, who testified as to the following documents: the Housing Authority Resident Lease Agreement; a Certificate of Death of Flor Cupelas, d.o.d. May 29, 2008; Cupelas's Tenant Data Summary; her income affidavits dated July 5, 2007, June 23, 2006 and August 3, 2004; and the Lease Addendums and Rent Change Notices, dated July 20, 2007, July 12, 2006 and September 21, 2005. On cross-examination, Haynes admitted that she had dinner with Cupelas and Rodriquez at the apartment, and that she was aware that Rodriquez was "around the apartment" and had seen him "quite a bit," but she could not "assume that he was living there" and never asked about his presence. Haynes also testified that Cupelas never asked about adding Rodriquez to the lease

On July 15, 2009, Hearing Officer Hines issued a decision concluding that Ramos and Rodriquez were not remaining family members as defined by the Housing Authority's regulations. After summarizing the testimony and evidence, the hearing officer made the following Findings and Conclusions:

The testimony and evidence presented demonstrate that the grievant [Ramos] was an original family member who was removed from the family composition. The grievant's name was crossed off the original Tenant Data Summary and the current Tenant Data Summary shows the tenant was the sole occupant of the subject apartment.

The tenant never submitted or received permission for the co-grievant [Rodriquez] to reside in the subject apartment. Although HA Haynes admitted that the co-grievant was often present in the tenant's apartment, the HA's lack of further inquiry or inaction as to the co-grievant's presence does not create succession rights to the premises.

The tenant did not include either grievants' name on the Occupant's Affidavits of Income submitted from 2005-2007. The Occupant's Affidavits of Income clearly indicate on page one directly above the family composition

section, "NOTICE: List all occupants living in your apartment. Failure to do so may deprive them of all rights of occupancy. No person is allowed to reside in your apartment except authorized members of your family (which is based on authorized original family members who remain in continuous residence and births), unless written permission is REQUESTED by you and GRANTED by Management."

The grievants are not remaining family members as defined by NYCHA regulations. A tenant who wishes to have an additional person, including former household members, join the household on a permanent basis must submit a written request to the development Manager and receive written approval for the additional occupant. The tenant did not seek or obtain the written permission of management for the grievants to join the household and accordingly their grievance is not sustained.

By letter dated July 29, 2009, the Housing Authority notified petitioner that it was approving "the Hearing Officer's decision and disposition in this proceeding denying the grievances for Luis Ramos and Sergio Rodriguez."

On November 5, 2009, Ramos and Rodriguez commenced the instant Article 78 proceeding. The petition asserts the following:

Sergio Rodriguez has been a resident at 2715 3rd Ave., Apt 3A, for approximately fifteen years, was Flor Cupeles primary care taker, common law husband, a senior citizen, and is permanently disabled. His primary care physicians for an open heart surgery procedure performed in 1998 are all in the area in which he currently resides. Being forced to move at this time creates financial hardship and complicated logistical issues related to his after care. Luis Ramos the eldest son of Flor Cupeles is Sergio Rodriguez's primary caretaker. For the last eight years he has traveled between New York and Los Angeles frequently to care for his mothers and Sergio Rodriguez medical needs. Both petitioners have been responsible for the rent for years and for currently keeping it up to date.

It has been a common practice of NYCHA to ask longtime domestic partners of deceased residents to vacate premises even when there is an obvious need due to medical consideration or financial considerations and limitations. The petitioners appeared at one meeting and two hearings presided over by employees of NYCHA. We respectfully request that the decision of Esther Hines be reviewed thoroughly and that the recordings made during the hearing be listened to. Furthermore the petitioners request that Esther Hines decision be reversed and that we may be given the opportunity to present our case in a truly impartial

forum without the restrictions imposed by NYCHA on its employees. Those restrictions affect not only us but many residents of NYCHA who find themselves in similar circumstances, which is why we feel this case is important and has merit.

In the case of Mr. Luis Ramos, this has been the only home he has known for 44 years and he should be given an opportunity to defend his right to stay there by someone who has an open mind and no restrictions as to what the final outcome should be.

The petitioners' request that this court stay any proceeding by respondent to remove petitioners from the premises in questions while this action is pending. Note: NYCHA was aware of the presence of Sergio Rodriquez in said apt for a long time before these proceedings started.

The Housing Authority served an Answer opposing the petition, asserting that Ramos and Rodriquez do not qualify as remaining family members within the meaning of the Housing Authority's rules. Specifically, the Housing Authority makes the following arguments: 1) the deceased tenant did not obtain written permission for either Ramos or Rodriquez to join her household during her lifetime; 2) the Housing Authority did not implicitly approve Rodriquez's unauthorized occupancy; 3) the equitable doctrine of unclean hands bars petitioners' claim; 4) public housing may not be bequeathed; and 5) petitioners' alleged mitigating circumstances do not justify exempting them from the remaining family member eligibility requirements; and 6) petitioners' payment of use and occupancy does not confer tenancy rights.

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, the Housing Authority's denial of petitioners' grievance on the basis that written permission had not been obtained for them to occupy the apartment, was neither arbitrary nor capricious. See Goldman v. New York City Housing Authority, 63 AD3d 532 (1st Dept 2009), lv app den 14 NY3d 701 (2010); Matter of Aponte v. New York City Housing Authority, 48 AD3d 229 (1st Dept 2008). The undisputed record establishes that neither Ramos nor Rodriguez qualifies as remaining family member, as they did not enter the apartment lawfully, the Housing Authority never gave the tenant of record written permission for either of them to join her household, and petitioners conceded that during her tenancy, the tenant of record never requested or obtained written consent from the Housing Authority to add either of them as a permanent member of her household. See Abreu v. New York City Housing Authority East River Houses, 52 AD3d 432 (1st Dept 2008); Matter of Aponte v New York City Housing Authority, *supra*. While Ramos and Rodriguez claim that they have been residing in the apartment, respectively, for eight and fifteen years, neither one was listed on the tenant's income affidavits dated July 5, 2007, June 23, 2006 and August 3, 2004. See Abreu v. New York City Housing Authority East River Houses, *supra*.

At best, petitioners assert that Cupelas relied on inaccurate information that Rodriguez could not be added to the lease because she and Rodriguez were not legally married, and that Housing Assistant Haynes had personal knowledge for a long period of time as to Rodriguez's presence in the apartment. However, even if Housing Authority through its housing manager, had knowledge of and acquiesced to petitioner's residency in the apartment, the Housing Authority cannot be estopped from invoking the regulations and determining that Rodriguez was not properly added to the household before Cupelas 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 (1st Dept 2010); Matter of Edwards v. New York City Housing Authority, 67 AD3d 441 (1st Dept 2009). While this result may seem harsh, the court is constrained by the foregoing legal authorities.

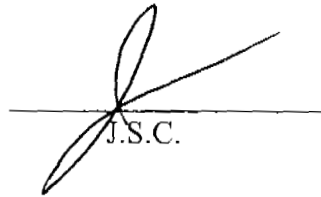
Thus, since it is undisputed that written permission was never obtained to add either Ramos or Rodriguez as an occupant, the Housing Authority's determination that they were not eligible for remaining-family-member status, was supported by a rational basis, and was not arbitrary or capricious. See Goldman v. New York City Housing Authority, *supra*.

Accordingly, it is

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

DATED: September 27, 2010

ENTER:


J.S.C.

UNFILED JUDGMENT
This judgment has not been filed by the County Clerk and notice of entry cannot be obtained hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).