

Matter of Ealey v New York City Hous. Auth.
2010 NY Slip Op 33179(U)
November 5, 2010
Supreme Court, New York County
Docket Number: 401091/10
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SALIANN SCARPULLA
Justice

PART 19

Monica Ealey
- v -
NYCHA

INDEX NO. 401 09/10
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

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

Cross-Motion: Yes No

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).

Upon the foregoing papers, it is ordered that this motion

¹³
motion and cross-motion are decided in accordance with accompanying memorandum decision.

This constitutes the decision and order of the court

Dated: November 5, 2010

Saliann Scarpulla
SALIANN SCARPULLA, 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: CIVIL TERM: PART 19

----- X

In the Matter of the Application of
MONICA EALEY,

Petitioner,

Index Number 401091/10
Submission Date 8/25/10
Mot. Seq. No. 001
**DECISION, ORDER
& JUDGMENT**

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
----- X

Appearances: For Petitioner:

For Respondent:
Sonya M. Kaloyanides
General Counsel, NYCHA
By Carol Polis
250 Broadway, 9th Floor
New York, NY 10007
212-776-5183

Pro **UNFILED JUDGMENT**
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, court or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1

Papers considered in review of this Article 78 Petition:

Papers	Numbered
Notice of Petition and Affidavits Annexed	1
Verified Answer, Brief	2, 3

HON SALIANN SCARPULLA, J.:

In this Article 78 petition, petitioner Monica Ealey seeks to review an administrative determination made by respondent New York City Housing Authority ("NYCHA") on March 19, 2010. NYCHA denied Monica Ealey's request to receive a lease as a remaining family member to the apartment of her late mother, Mary Ealey, the former tenant of record, who passed away on October 24, 2006. After holding a hearing on March 16, 2010, NYCHA denied Monica Ealey's claim because of her failure to maintain continuous residence in the mother's apartment and the failure to obtain written

permission from NYCHA when Monica Ealey moved back in to help her ailing mother a month before her death.

At the grievance hearing, petitioner testified that she and her mother were tenants, at the subject apartment since 1998. At some time in 2004, Monica Ealey moved out and rented a separate apartment at 2080 Lafontaine Ave., Bronx, New York. In August of 2006, Mary Ealey was diagnosed with cancer, prompting Monica Ealey to move back in to care for the mother. During the one-and-a-half months, Monica Ealey lived in the apartment before Mary Ealey's death, neither notified the building's development manager in writing of Monica Ealey's return. On December 1, 2006, Monica Ealey inquired about obtaining the status of a surviving family member and a lease in her name, but was rejected.

At the hearing, Monica Ealey argued that she was not able to inform NYCHA of her return because the building management maintained very short office hours from 9 a.m. to 11 a.m., and in the midst of efforts to tend to Mary Ealey's medical needs, she did not have any opportunity to formally update the family's composition before Mary Ealey's passing. Monica Ealey further argued that she was never formally notified that her name was taken off the lease in 2004, and that NYCHA's housing file contained the most recent lease, executed in 2001, which contained Ealey's name. NYCHA's hearing officer, however, determined that despite Monica Ealey's regrettable circumstances,

NYCHA's rules did not provide for her continued occupancy as a remaining family member.

Discussion

It is a well-settled rule that judicial review of administrative determinations is limited to the grounds invoked by the agency. *Matter of Aronsky v Board of Educ.*, 75 NY2d 997 (1990). The court may not substitute its judgment for that of the agency's determination but shall decide if the determination can be supported on any reasonable basis. *See Matter of Clancy-Cullen Storage Co. v Board of Elections of the City of New York*, 98 AD2d 635, 636 (1st Dept. 1983). The test of whether a decision is arbitrary or capricious is “determined largely by whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact.” *Matter of Pell v Board of Educ.*, 34 N.Y.2d 222, 232 (1974). An arbitrary action is without sound basis in reason and is generally taken without regard to the facts. *Matter of Pell*, 34 N.Y.2d at 232. The burden is “squarely on the petitioner” to demonstrate entitlement to Article 78 relief. *See Matter of Che Lin Tsao v Kelly*, 28 A.D.3d 320, 321 (1st Dept. 2006); *see also Miggins v City of N.Y.*, 286 AD2d 258 (1st Dept. 2001).

Under NYCHA's administrative rules, specifically Ch.4 (F)(4) and the remaining-family-member policy, reduced to writing in GM-3692(Amended) (III)(C)(3) and (IV), which are incorporated by reference into every lease, original family members who move out of the household do not automatically obtain permission for permanent occupancy by

virtue of their former occupancy. They may only obtain permission for permanent occupancy if requested in writing by the tenant of record and granted by the housing manager. Further, even if a relative or a registered domestic partner is properly added to the tenant's household and is included on all affidavits of income, the relative is entitled to succession rights only if the relative joins/rejoins the tenant at least one year prior to the tenant's vacating the apartment or dying. See *Daniels v New York City Housing Authority*, 66 A.d.3d 579, 580 (1st Dep't 2009); see also *Pelaez v New York City Housing Authority*, 56 A.D.3d 325, 325 (1st Dep't 2008).

Here, the evidence is undisputed that Ealey moved out of her mother's household sometime in 2004 and never properly rejoined it. The fact that NYCHA did not issue an updated lease with Monica Ealey's name removed does not vitiate the fact of separate residence that Monica Ealey admittedly established at 2080 Lafontaine Avenue, Bronx, New York. Also, even if NYCHA were to overlook the requirement of written notice and approval, Monica Ealey would still not be entitled to succession rights, because she came back to live with her mother one-and-a-half months prior to the mother's death, falling short of the one-year continuous residence requirement by no fewer than ten months.¹ Therefore, NYCHA's administrative hearing determination that Monica Ealey was

¹Monica Ealey's argument that Mark Popper of NYCHA's Bronx Borough Office orally assured her that she could stay in the subject apartment as long as she paid rent is not dispositive, because the doctrine of equitable estoppel is inapplicable to local and state governmental agencies, including NYCHA. See *Schorr v New York City Dept. of Hous. Preserv. and Dev.*, 10 N.Y.3d 776, 779 (2008).

ineligible to succeed to Mary Ealey's apartment was made in accordance with NYCHA's administrative regulations and policy and was not arbitrary or capricious.

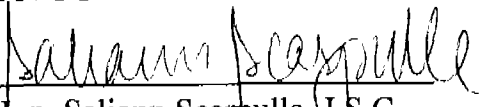
In accordance with the foregoing, it is

ORDERED and ADJUDGED that the application of Monica Ealey to set aside the administrative determination issued by respondent New York City Housing Authority, dated March 19, 2010, is denied in its entirety, and this Article 78 petition is dismissed.

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

Dated: New York, New York
November, 5 2010

ENTER


Hon. Saliann Scarpulla, 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).