

Garrett v New York City Hous. Auth.

2010 NY Slip Op 34004(U)

November 23, 2010

Supreme Court, New York County

Docket Number: 101786/10

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: MANUEL J. MENDEZ PART 13
Justice

AARON GARRETT,

- v -

NEW YORK CITY HOUSING AUTHORITY,

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NYS SUPREME COURT

INDEX NO. 101786/10

MOTION DATE 05-20-2010

MOTION SEQ. NO. 1

MOTION CAL. NO. 32

ES
11/24/10
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The following papers, numbered 1 to 2 were read on this petition to/for Art. 78

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

Answering Affidavits — Exhibits _____ cross motion _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

Cross-Motion: Yes X No

Upon the foregoing papers, it is ordered and adjudged that this Article 78 petition is denied and the proceeding is dismissed.

Petitioner resides at 3150 Broadway Apt. 1B (Grant Houses) which is managed by the Respondent New York City Housing Authority. Petitioner filed a grievance with Respondent to be qualified as a Remaining Family Member (RFM) and succeed to the apartment.

The apartment had been leased to Petitioner's mother, Ms. Mary Garrett and later to Petitioner's Father Mr. Richard Garrett, Sr., . Petitioner had been an original member of the household but moved out on March 5, 1997 [see Answer Exh. H & J]. Petitioner's mother died on January 19, 2005 [see answer Exh. M]. At her death Petitioner's father was granted a lease as a Remaining Family Member. Petitioner claims that due to his father's deteriorating health he had to return to the apartment in 2006. Affidavits of income filed by Ms. Mary Garrett beginning February 1, 1999 through January 4, 2005 do not listed petitioner as a member of the family composition. Affidavits of income filed by Mr. Richard Garrett, Sr., beginning December 12, 2005 through December 24, 2007 do not list petitioner as a member of the family composition. [see Answer Exh. D]. Mr. Richard Garrett, Sr., passed away on September 23, 2008. [see Answer Exh. O]. Mr. Richard Garrett, Sr., did not request permission for either of his sons to reside in the apartment with him.

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

Following Mr. Garrett Sr's., death Petitioner filed a grievance with management seeking remaining family member status. This grievance was denied on April 10, 2009 by project manager Rollin Deas, stating as a reason "...since there was no continuous occupancy and, in fact, that neither brother had requested nor received permission to reside in the apartment at the time of their father's death, no succession rights apply...." [see Exhibit Q]. On May 15, 2009 the Borough Manager, Virgilio Cruz, agreed with the manager's disposition denying Petitioner's grievance [See Exhibit S]. The Grievance was then referred to Hearing Officer Arlene Ambert who held hearings on September 1 and November 12, 2009. At the hearing petitioner, who was representing himself, testified.

The hearing officer by decision dated November 19, 2009 determined that "the grievant is not a remaining family member as defined by Housing Authority regulations. A tenant who wishes to have an additional person join the household on a permanent basis must submit a written request to the development manager and receive written approval for the additional occupant; and the occupant must reside in the subject apartment for at least one (1) year after receiving the written permission and prior to the tenant's death. The tenant did not obtain the written permission of the Housing Authority for the Grievant to rejoin and reside in the subject apartment. [see Exh. BB].

NYCHA'S Board reviewed the Hearing Officer's decision and approved it by decision date December 12, 2009. [see Exh. CC]. Petitioner filed the instant Article 78 petition on April 22, 2010, seeking judicial review of Respondent's determination denying his grievance. [see Article 78 petition].

"... A proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner...."[C.P.L.R. § 217(1)]. This abbreviated time frame is said to serve public policy by freeing government operations from the "cloud" of potential litigation [Best Payphones, Inc., v. Department of Information, Technology and Communications of City of New York, 5 N.Y. 3d 30, 832 N. E. 2d 38, 799 N.Y.S. 2d 182 (2005)]. An administrative determination becomes "final and binding" triggering the four month statute of limitations for commencing an Article 78 proceeding, when the petitioner seeking review has been aggrieved by it. [Rocco v. Kelly, 20 A.D. 3d 364, 799 N.Y.S. 2d 469 [App. Div. 1st. 2005]; Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [2000]. The four month limitations period for Article 78 review runs from petitioner's receipt of the adverse determination [Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [supra].

NYCHA's determination became final and binding when petitioner received notice of the Board determination in December of 2010. He filed this Article 78 Petition within four months of receipt of NYCHA's determination therefore the petition is timely.

According to the "one year rule" only where a remaining family member has lived in an original public housing tenant's apartment for one year after having been granted written permission to do so may the remaining family member succeed to the apartment (*Torres v. New York City Housing Authority*, 40 A.D. 3d 328, 835 N.Y.S. 2d 184 [App. Div. 1st. Dept. 2007]). As such remaining family member status has been denied to a Grandson who despite residing in the apartment many years, did not become " an authorized occupant of the apartment prior to the Grandmother's death." (*Valentin, v. New York City Housing Authority*, 72 A.D. 3d 486, 898 N.Y.S. 2d 130 [App. Div. 1st. Dept. 2010]), a Granddaughter who failed to obtain written approval or occupy the apartment continuously for a period of one year after obtaining permission (*Hargrove v. Van Dyke Housing*, 63 A.D. 3d 741, 880 N.Y.S. 2d 156 [App. Div. 2nd. Dept. 2009]), a Daughter who had not resided in the apartment for one year prior to her mother's death and had not applied for permission to rejoin household (*Pelaez v. New York City Housing Authority*, 56 A.D. 3d 325, 867 N.Y.S. 2d 413 [App. Div. 1st. Dept. 2008]), an occupant who did not enter the apartment lawfully and for which no written permission was given to the tenant of record (*Abreu v. New York City Housing Authority*, 52 A.D. 3d 432, 860 N.Y.S. 2d 115,[App. Div. 1st. Dept. 2008]; *Jamison v. New York City Housing Authority*, 25 A.D. 3d 501, 809 N.Y.S. 2d 14 [App. Div. 1st. Dept. 2006]; *New York City Housing Authority v. Newman*, 39 A.D. 3d 759, 834 N.Y.S. 2d 541 [App. Div. 2nd. Dept. 2007]).

" A showing that the authority knew of, and took no preventive action against, the occupancy by the tenant's relative, could be an acceptable alternative for compliance with the notice and consent requirements." [*McFarlane v. New York City Housing Authority*, 9 A.D. 3d 289, 780 N.Y.S. 2d 135 [App. Div. 1st. 2004]; However, it has not been shown by this record that the authority knew of Petitioner's occupancy and took no action. The documents submitted by petitioner to show that the Housing Authority was aware of his presence in the apartment were not documents submitted to or issued by the Housing Authority. The copies of Money Orders, submitted to show that petitioner was paying the rent, are all dated after the death of the tenant of record, which was September 23, 2008 [see Exh. AA].

Finally, there was no evidence presented to indicate that the tenant lacked the mental capacity to request written permission for petitioner's occupancy [*Rivera v. New York City Housing Authority*, 2009 WL 673843 (App. Div. 1st. Dept. 2009)].

Petitioner did not obtain written permission from Management to reside in the apartment permanently; Therefore, petitioner cannot be granted remaining family member status and his petition to annul the Hearing Officer's determination must be denied.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed;

This constitutes the decision and judgment of this court.

Dated: November 23, 2010

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Manuel J. Mendez

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