

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

2011 NY Slip Op 31877(U)

July 1, 2011

Supreme Court, New York County

Docket Number: 403165/2010

Judge: Barbara Jaffe

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

PRESENT: JAFFE  
*Justice*

PART 5

Index Number : 403165/2010  
COTHIA, MARIE  
VS.  
NEW YORK CITY HOUSING AUTHORITY  
SEQUENCE NUMBER : 001  
ARTICLE 78  
CAL # 27

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for Article 78

PAPERS NUMBERED  
1  
2, 3  
4

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

**FILED 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).

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

Dated: 7/1/11  
JUL 1 2011

BARBARA JAFFE J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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 5

-----X  
In the Matter of the Application of MARIE COTHIA,

Index No. 403165/10

Petitioner,

Motion Date: 4/26/11

Motion Seq. No.: 001

For a judgment pursuant to C.P.L.R. Article 78,

-against-

**DECISION & JUDGMENT**

THE NEW YORK CITY HOUSING AUTHORITY and  
JOHN B. RHEA, as Chairman of the New York City  
Housing Authority,

**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).

Respondent.  
-----X

BARBARA JAFFE, JSC:

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By amended notice of petition dated November 22, 2010, petitioner brings this Article 78 proceeding seeking to reverse respondents' determination, dated July 14, 2010, denying petitioner's application for tenancy in apartment 7C in the Grant Houses at 3150 Broadway, New York, New York. Respondents (NYCHA) opposes the petition.

**I. BACKGROUND**

**A. NYCHA procedures**

NYCHA manages the premises at issue, which is part of a public housing complex, pursuant to regulations promulgated by the Department of Housing and Urban Development,

which require that it, at least annually, monitor a tenant's family composition and income after admitting the tenant into public housing. (Verified Answer, dated Feb. 11, 2011 [Ans.]). An admitted tenant must request NYCHA's approval to add any other family member as an occupant and supply any requested information for the annual examination. (*Id.*). The tenant must also complete an annual affidavit of income, listing all occupants in the household. The form notifies the tenant that a failure to list all occupants may deprive them of their occupancy rights and that no person is allowed to reside in the household unless written permission is requested by the tenant and granted by NYCHA management. (*Id.*, Exh. E).

Once a tenant is an admitted occupant, she may add another family member to the household by requesting and receiving NYCHA's development manager's written consent. (*Id.*, Exhs. A, B). A family member who was originally part of the household and who then moves out of the household must be granted written permission to return. (*Id.*).

When an original tenant moves out or dies, a "remaining family member" may take over the tenant's lease if she establishes that she: (1) moved into the apartment lawfully (was listed on the housing application and authorized to reside there at the initial move-in, was born/adopted into the family, or moved in permanently with management's written permission); (2) falls within certain categories of relatives of the original tenant; (3) remained in the apartment continuously after lawful entry; (4) remained in the apartment for not less than one year after the date of lawful entry and prior to the date the original tenant vacated the apartment or died; and (5) is eligible for public housing. (*Id.*, Exhs. A, E, F). To show continuous occupancy, the remaining-family-member applicant must be included on all of the tenant's affidavits of income from the time of the applicant's lawful entry into the household to the time the tenant vacates or

dies. (*Id.*, Exh. B).

To determine if an applicant qualifies as a remaining family member, she must first meet with the development manager, and if the manager denies the application, the manager must submit the reasons for the denial along with the original tenant's record to the Borough/District Management Office (District Office) for review. (*Id.*, Exhs. E, G). After the District Office reviews the denial and the tenant's record, and if it upholds the denial, the applicant may request a hearing. At the hearing, the applicant bears the burden of proving his entitlement to the relief sought and NYCHA bears the burden of justifying its action or failure to act. The hearing officer then makes a recommendation, which NYCHA's Board reviews before making a final determination. During this process, the applicant must remain current in her payment of use and occupancy. (*Id.*).

NYCHA has also adopted procedures for assessing the mental competence of remaining-family-member applicants, which require, when specific criteria are triggered, its Housing Manager or designee, the Law Department, or the hearing officer, to refer the grievant to Social Services for an evaluation to determine if the grievant requires a guardian ad litem (GAL). (*Id.*).

#### B. Tenancy of apartment 7C

By lease dated October 18, 1988, petitioner, also known as Louisiana Cothia, and her husband, Octoleme Cothia, rented apartment 7C at 3150 Broadway. (*Ans.*, Exh. W). NYCHA's records reflect that Octoleme Cothia was the tenant of record for the apartment and the other permitted occupants of the apartment were petitioner and their daughter Sylvia Cothia. (*Id.*, Exh. D). NYCHA's interview notes indicate that by February 17, 1992, both Sylvia and petitioner had

moved out of the apartment. (*Id.*, Exh. K).

In 1999, Sylvia Cothia applied for permission to reside in the apartment with Octoleme Cothia, and on or about March 29, 1999, NYCHA granted her application. (*Id.*, Exh. J).

Sometime in 2000, Sylvia Cothia moved out of the apartment and petitioner moved back in. (*Id.*, Exh. T).

By lease dated June 5, 2001, Octoleme Cothia agreed that the apartment was to be used as his sole residence and that of any of his household members, defined as those named in the signed lease, born or adopted into the household, or authorized by the landlord, who remain in continuous occupancy since the inception of the tenancy, birth, or authorization by the landlord. (*Id.*, Exh. D). He also agreed to obtain the housing manager's written consent before allowing any person to reside in the apartment other than a family member named in his signed application or born or adopted into the household or subsequently authorized by the landlord. (*Id.*).

On or about December 16, 2004, petitioner and Sylvia Cothia applied for a new NYCHA apartment, listing an address in Queens as their home address. (*Id.*, Exh. V).

On December 16, 2004, Octoleme Cothia requested that NYCHA add his granddaughter, Christina Cothia to his household, which application was rejected on March 10, 2005 as NYCHA had not received proof of income, support payments, or additional information. (*Id.*, Exh. BB).

In his 2007 Affidavit of Income, Octoleme Cothia indicated that he was the sole occupant of the apartment, and in his 2008 Affidavit of Income, that he and Christina Cothia were the sole occupants. (*Id.*, Exh. E).

On March 23, 2008, Octoleme Cothia passed away. (*Id.*, Exh. L).

A NYCHA interview record dated March 19, 2008 reflects that although additional

information had been requested concerning Christina Cothia, it had not been submitted, and thus NYCHA would perform its annual review “without acknowledging that she is part of the family composition.” On April 4, 2008, NYCHA granted Christina permission to join the household, apparently without knowing that Octoleme Cothia had passed away. (*Id.*, Exh. BB).

On or about April 8, 2008, NYCHA sent Octoleme Cothia a lease addendum/rent notice, indicating that he and Christina Cothia were the authorized members of the household, and granting him a one-year renewal lease effective June 1, 2008. (*Id.*, Exh. AA).

On June 13, 2008, Sylvia Cothia met with a NYCHA representative to discuss the new apartment for which she and her mother had applied. Sylvia disclosed that she and petitioner had moved into Octoleme’s apartment without NYCHA’s awareness or approval and they wanted to refuse the new apartment and stay in Octoleme’s apartment. The representative advised that petitioner was not an approved member of Octoleme’s household. (*Id.*, Exh. K).

At the beginning of 2009, Octoleme Cothia’s folder was sent to the District Office for review. (*Id.*, Exh. K). A grievance summary dated March 31, 2009 reflects that on March 17, 2009, a meeting was held on petitioner’s and Sylvia Cothia’s remaining family member grievance although neither of them was present. As summarized by NYCHA’s housing manager, the grievance was “based solely on the premise that family members [not residuals with succession rights/eligibility for this apartment] lived in the apartment [without permission of management] at the time of the [tenant of record’s] death on March 23, 2008.” The housing manager denied the grievance as neither petitioner nor Sylvia Cothia had written permission to reside in the apartment at the time of Octoleme Cothia’s death, and as “there were no approved members of the household other than [Octoleme] at the time of his death, there is no basis to offer a lease to any claimant.” (*Id.*, Exh. M).

By letter dated April 6, 2009, NYCHA advised petitioner and Sylvia Cothia that their grievance would be reviewed by the District Office. (*Id.*, Exh. N).

By letter dated April 23, 2009, a nurse practitioner employed by the Visiting Nurse Service of New York wrote to NYCHA in support of petitioner's grievance, stating that she had been petitioner's medical provider for the past five and a half years during which time petitioner had been always been homebound in apartment 7C, and that her agency's records indicated that petitioner had received nursing services at the apartment on a daily basis since January 2000. She also stated that petitioner was an elderly woman in her 70s who had suffered a stroke years ago which required her to obtain assistance for daily activities, and that she was also blind and homebound. (*Id.*, Exh. P).

On May 1, 2009, Sylvia appeared for a second-step grievance along with a social worker on her behalf, and the same day, NYCHA's Board Manager dismissed petitioner and Sylvia Cothia's remaining-family-member grievance based on their failure "to make any showing to substantiate their claim," finding as follows:

According to Sylvia, her mother Maria Cothia [petitioner] is bedridden and unable to appear for a grievance. Sylvia reported that her mother was living in the apartment for several years however due to domestic issues the father never took the steps to add Marie to the household. Sylvia referred to a letter dated July 5, 2005 to management requesting that Christina Cothia be added to the household of the lessee. However, she does not recall if a NYCHA form was submitted to add Marie to the household. The social worker indicated that he has knowledge that Marie Cothia has been living in the apartment for the past ten years. He submitted a copy of a letter from the VNS in support of his claim. Sylvia is seeking consideration due to the poor health of her mother. She claims that if they are asked to vacate the apartment it would be very difficult on the entire family. Marie Cothia has numerous health issues and is unable to care for herself. A review of the file reveals that Marie Cothia was listed in the housing application but not listed in the family composition sheet. There is no record that the lessee requested or obtained permission for Marie Cothia to reside in the apartment. Therefore, Marie Cothia is an unauthorized occupant. I concur with the decision of the manager and deny her remaining family member claim.

(*Id.*, Exhs. K, O).

By letter dated September 18, 2009, NYCHA scheduled a grievance hearing for November 13, 2009, which was adjourned to November 18, 2009, at which time the hearing officer apparently decided that petitioner should be evaluated to determine whether a GAL should be appointed to represent her, and adjourned the hearing to January 19, 2010. (*Id.*, Exhs. Q, S, T).

By letter dated November 25, 2009, a GAL was appointed for petitioner. (*Id.*, Exh. U). On January 19, 2010, the grievance hearing was adjourned to February 23, 2010. (*Id.*, Exh. T). On February 23, 2010, the hearing was held and an attorney and petitioner's GAL appeared on petitioner's behalf; she did not appear. A NYCHA housing assistant testified that before Octoleme died, no one in the household requested permission for Sylvia Cothia to return to the apartment and NYCHA management had not been notified that petitioner was living in the apartment. The hearing was then adjourned to April 29, 2010, at which time petitioner's attorney submitted a copy of an insurance statement addressed to petitioner which listed apartment 7C as her mailing address, advising that her premium was due in November 2000, as proof that petitioner had been living in the apartment since 2000. (*Id.*, Exhs. T, Z).

The hearing was adjourned to May 27, 2010, when Sylvia Cothia testified that Octoleme Cothia had taken petitioner off of the lease after they separated, and that petitioner had moved out of the apartment in 1998 but moved back in 2000. She also stated that she had moved out of the apartment in 2000 and had her name taken off of the lease in 2004 or 2005, and admitted that NYCHA had never been informed that petitioner had moved back. (*Id.*, Exh. T).

By e-mail dated June 15, 2010, NYCHA's attorney asked the hearing officer to close the matter as petitioner's attorney did not intend to call additional witnesses. (*Id.*, Exh. DD).

By determination dated June 25, 2010, the hearing officer denied the grievance as neither petitioner nor Sylvia Cothia had shown that they occupied the apartment with NYCHA's permission and thus they were not remaining family members as defined by NYCHA's regulations. (*Id.*, Exh. EE). By letter dated July 14, 2010, NYCHA approved the hearing officer's determination. (*Id.*, Exh. FF).

## II. CONTENTIONS

Petitioner alleges that NYCHA's action were arbitrary and capricious and an abuse of discretion as it denied her grievance despite evidence of her medical history, including mental illness, and thus violated her federal civil rights and federal discrimination law as well as New York State Human Rights Law. She also asserts that there is evidence that she lived at the apartment for 20 of the last 22 years and that NYCHA had knowledge of her residency and took no action to remove her. (Verified Petition, dated Nov. 11, 2010).

NYCHA argues that its determination to deny petitioners' remaining-family-member status is rational and not arbitrary or capricious as it was consistent with its policies and regulations. It maintains that petitioner does not qualify for remaining-family-member status and is not entitled to remain in the apartment simply because she has lived there for many years, and denies that it knew or approved of her residency. It also contends that petitioner's disabilities do not exempt her from its remaining family member regulations and that petitioner submitted no evidence at the hearing or here that it denied her grievance or treated her in a discriminatory manner or did not accommodate her disabilities. (Ans.).

## III. ANALYSIS

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis

in reason and . . . without regard to the facts.” (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assoc. v Div. of Hous. & Community Renewal*, 225 AD2d 349 [1<sup>st</sup> Dept 1996]). Moreover, the determination of an administrative agency, “acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency’s determination is supported by the record.” (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1<sup>st</sup> Dept 2007], *affd* 11 NY3d 859 [2008]).

Here, it is undisputed that although petitioner was an authorized occupant of apartment 7C in 1988, she thereafter moved out and moved back in without requesting permission to do so, and that Octoleme Cothia never sought or received NYCHA’s permission to rejoin his household and did not list petitioner on his 2007 and 2008 income affidavits or any prior affidavits. Thus, NYCHA’s determination denying her remaining-family-member status is rational and neither arbitrary nor capricious. (*See Matter of Filonuk v Rhea*, 84 AD3d 502 [1<sup>st</sup> Dept 2011] [NYCHA’s determination rational as evidence showed that petitioner did not become authorized occupant of household before tenant’s death]; *Matter of Fermin v New York City Hous. Auth.*, 67 AD3d 433 [1<sup>st</sup> Dept 2009] [petitioner did not qualify as remaining family member as, although he originally entered household lawfully, he then left and was not included in tenant’s income affidavits]; *Matter of Pelaez v New York City Hous. Auth.*, 56 AD3d 325 [1<sup>st</sup> Dept 2008] [determination that petitioner not remaining family member not arbitrary as she had not applied for permission to rejoin household and was not listed on income affidavits]; *Matter of Aponte v New York City Hous. Auth.*, 48 AD3d 229 [1<sup>st</sup> Dept 2008] [denial of grievance on ground that written permission

had not been given for petitioners to return to apartment not arbitrary; evidence included income affidavits showing that deceased tenant was sole occupant]; *Matter of Johnson v New York City Hous. Auth.*, 50 AD3d 438 [1<sup>st</sup> Dept 2008] [petitioner conceded that he never obtain NYCHA's permission to live in apartment and income affidavits did not list him as occupant]).

Petitioner also failed to establish, either during the hearing or here, that NYCHA was aware of and implicitly approved of her residence in the apartment. (*Matter of Echeverria v New York City Hous. Auth.*, \_\_ NYS3d \_\_, 2011 NY Slip Op 05353 [1<sup>st</sup> Dept 2011] [no legal basis for relieving petition of written notice requirement for remaining family member status absent evidence that NYCHA knew of and implicitly approved of her residency]; *Aponte*, 48 AD3d at 229 [same]; *Matter of New York City Hous. Auth. Hammel Houses v Newman*, 39 AD3d 759 [2d Dept 2007] [applicant failed to obtain written permission to reside in apartment and no evidence that NYCHA knew of applicant's residence as income affidavits did not list her]).

Petitioner also offered no evidence that NYCHA discriminated against her on the basis of her disabilities or that it did not accommodate her. (*See eg Matter of Rivera v New York City Hous. Auth.*, 60 AD3d 509 [1<sup>st</sup> Dept 2009] [petitioner was not "qualified individual with disability" under Americans with Disabilities Act as tenant of record did not obtain written permission for him to reside in apartment, and even if he was qualified individual, NYCHA's rules required tenant and not petitioner to obtain written permission and thus petitioner's disability irrelevant]).

And, although petitioner established mitigating factors, and that her eviction from the apartment would be a hardship to her, they do not constitute a legal ground upon which to annul NYCHA's determination, nor does the fact that petitioner lived in the apartment for many years. (*See Matter of Guzman v New York City Hous. Auth.*, \_\_ NYS2d \_\_, 2011 NY Slip Op 05129 [1<sup>st</sup>

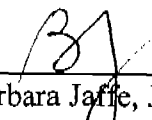
Dept 2011] [mitigating factors and hardship did not provide basis for annulling determination]; *Matter of Valentin v New York City Hous. Auth.*, 72 AD3d 486 [1<sup>st</sup> Dept 2010] [petitioner lived in grandmother's apartment for many years but did not obtain authorization to do so before her death and was thus not entitled to remaining family member status]; *Fermin*, 67 AD3d at 433 [rejecting petitioner's assertion that hearing officer should have considered mitigating circumstances and hardship to petitioner]).

IV. CONCLUSION

Accordingly, it is hereby

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

ENTER:

  
\_\_\_\_\_  
Barbara Jaffe, JSC

**BARBARA JAFFE**  
J.S.C.

DATED: July 1, 2011  
New York, New York

JUL 01 2011

**UNFILED JUDGMENT**

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