

Matter of Firpi v New York City Hous. Auth.
2011 NY Slip Op 32964(U)
November 4, 2011
Supreme Court, New York County
Docket Number: 102644/11
Judge: Judith J. Gische
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDITH J. GISCHE
Justice

PART 10

Index Number : 102644/2011

FIRPI, DELILAH

vs.

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 001

Motion to/for _____

No(s). _____

No(s). _____

No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Delilah
**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION, ORDER &
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: NOV 04 2011

JJG
_____, J.S.C.
HON. JUDITH J. GISCHE

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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 10

-----X
In the Matter of the Application of DELILAH FIRPI,

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
-----X

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these)
motion(s):

Papers	Numbered
Notice of Pet and Pet w/DF supporting affids, exhs	1
Resp's answer, exhs	2
Stip to adjourn	3

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

In this Article 78 Petition, pro se petitioner Delilah Firpi (Firpi) seeks an order annulling and reversing the determination of respondent New York City Housing Authority (NYCHA), dated December 22, 2010, denying her request for remaining family member succession rights to Apartment 2A at 80 Baruch Drive, New York, New York (the Apartment). The Apartment is part of Baruch Houses, a federally funded public housing development owned and administered by NYCHA. With respect to instant proceeding, the following facts are not in dispute unless otherwise indicated.

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Page 1 of 1

Firpi is the surviving daughter of Aida Mendoza (Mendoza or Tenant), the tenant of record for the Apartment until the time of her death on February 19, 2010. Firpi, who grew up in the Baruch Houses, moved out on December 11, 1998, and has not been listed as an occupant or tenant of the Apartment since that time. In or about August 2009, Firpi returned to the Apartment, along with her two young children, to care for her mother whose health was declining rapidly. Following her mother's death, Firpi attempted, through NYCHA's grievance process, to obtain a lease to the Apartment in her own name as a "remaining family member."

NYCHA recognizes certain individuals as remaining family members with succession rights to the public housing accommodations. The requirements for obtaining remaining family member status and becoming eligible for a lease to that apartment are set forth in NYCHA Management Manual § J, as amended July 11, 2003, GM-3692 Amended § IV. As relevant here, these requirements include obtaining the written approval from the housing manager for that particular public housing development for the proposed tenant/immediate relative to reside in the apartment with the tenant of record, and residence in that apartment by the proposed tenant/immediate relative for at least one year prior to the tenant of record's death or departure (*id.*).

On or about June 2, 2010, Anita Lal (Lal), a manager with the Baruch Houses Management Office, provided Firpi with an NYCHA "Remaining Family Member Claim" form letter (dated June 2, 2010) informing her, among other things, that, as an occupant of the Apartment without the benefit of a lease, she "may be subject to eviction by the Authority" (Verified Answer, Exhibit I). The letter also informed Firpi of her right to a "grievance proceeding on the issue of whether you may be entitled to keep the apartment and be offered a

lease” on the condition that she provide a written demand for a grievance proceeding within 14 days of receipt of the instant notice, and stay current in payment of use and occupancy for the Apartment (Verified Answer, Exhibit J). Firpi paid the required use and occupancy, and timely submitted her written request, stating in relevant part:

I, Delilah Firpi would like to exercise my right and file a grievance as a remaining family member. . . . Prior to [Mendoza’s] demise and currently, I and my two (2) daughters reside at said apartment.

Unfortunately, due to her declining health, she was not able to re-enter me and my two (2) daughters into the lease. I was a member of her household and on the lease for over 20 years, as I was born while she was the lease holder. I returned when she became very ill and needed round the clock care. . . . Due to the situation with my Mother’s health and later passing, I returned to said apartment and relin[qu]ished any other living space I previously resided at. My children and I have no other place to live and I am graciously asking for you to have sympathy for our situation and consider how difficult a time my daughters and I have suffered. . . . I am employed and have no difficulties paying the rent and have never been in trouble with the law. . . .

On June 9, 2010, Petitioner met with Lal for a remaining family member grievance interview. By written “Project Grievance Summary,” dated June 9, 2010, Lal formally denied Firpi’s request for a lease in her name on the grounds that Mendoza’s most recent “Occupant’s Affidavit of Income” form, dated December 30, 2009, does not list Firpi as an occupant, and because Mendoza “did not request, nor was granted, permission for Firpi and her children to re-join the household” (Verified Answer, Exhibit K).

Firpi timely requested that the Borough Office review Lal’s determination. Firpi was given an opportunity to submit written documentation for review in advance of the in-person interview which was conducted by Borough Manager Virgilio Cruz (Cruz) on July 9, 2010. By written District Grievance Summary, dated July 9, 2010, the Cruz agreed with Lal’s disposition and denied Firpi’s claim for remaining family member status. Under the section “Findings and

Reasons," Cruz stated:

According to Ms. Firpi, she returned to the apartment in August of 2009 to care for her mother. Due to the condition of Mrs. Mendoza and the attention she required, Ms. Firpi was not thinking of reporting to management that she returned to the apartment. She believes that she should be considered for remaining family member status because she returned to the apartment. A review of the file reveals that Ms. Firpi was once a member of the household and subsequently vacated. The lessee never requested or obtained permission for Ms. Firpi to rejoin the household. Therefore, Ms. Firpi is considered an unauthorized occupant and not eligible for a lease (Verified Answer, Exhibit M).

Firpi was informed of her right to appeal and promptly requested an administrative hearing before a hearing officer.

The administrative hearing was held on December 2, 2010, before Hearing Officer Arlene Ambert. Firpi, who was not represented by counsel, presented evidence consisting of several documents and oral testimony pertaining to the circumstances surrounding her move back to the Apartment. She testified that she moved back into the Apartment where she grew up because her seriously ill mother needed her help on a constant basis. Firpi submitted documentary evidence consisting of a driver's license identifying Baruch Houses as her current address, and letters from her job and children's school and daycare center confirming that she, in fact, had secured employment in a local candy store and had her daughters enrolled in a neighborhood school and daycare center. Firpi explained that taking care of her mother and her young daughters were her priorities, not dealing with Housing Management about occupancy requirements. And finally, Firpi sought compassion from the hearing officer in sustaining her grievance based on her qualifications as a tenant and the fact that she and her daughters would have no place to live because she gave up her apartment in order to move in with her ailing mother.

Next, NYCHA, through its general counsel, presented its evidence consisting copies of

the Tenant Data Summary Sheet pertaining to the Apartment, Mendoza's death certificate, Firpi's prior driver's license reflecting a different address,¹ and the testimony of a resident services associate to authenticate the Tenant Data Summary Sheet.

After considering the evidence, the hearing officer denied Firpi's grievance for the same reasons her grievance had been denied by Lal and Cruz. In her written disposition, dated December 9, 2010, the hearing officer explained:

. . . even if permanent permission had been requested by the Tenant and immediately granted at the time that she actually into the subject apartment, in August 2009, she still would not be eligible for remaining family member status as her authorized occupancy must be continuous for one (1) year prior to the Tenant's death. Since the Tenant passed away in February 2010, the time period would not have been sufficient to secure the Grievant's remaining family member status.

Although the evidence presented demonstrates that the Grievant may in fact be a very deserving individual, who sacrificed herself for the well being of the Tenant, the Grievant is not a remaining family member as defined by Housing Authority regulations.

The Grievant's altruism is commendable. Unfortunately, it is insufficient to overcome the requirements necessary to achieve remaining family member status (Verified Answer, Exhibit T).

On December 22, 2010, NYCHA issued its determination approving the hearing officer's decision and disposition denying petitioner's grievance (the Determination) (Verified Answer, Exhibit U). Thereafter, Firpi brought this Article 78 petition for an order annulling and reversing the Determination.

Petitioner acknowledges that she did not obtain NYCHA's permission to join her mother's household and that she did not live in the Apartment for one year prior to her mother's death. Rather, it is her contention that she is entitled to the lease because: (1) she grew up in the

¹Despite argument made by counsel for NYCHA, the different addresses listed on Firpi's driver's licenses were not the basis for the hearing officer's decision.

Apartment; (2) she gave up her own apartment and returned to Apartment 2A to care for her ailing mother; (3) she did not know of, and NYCHA did not inform her about, the regulation that she needed their permission to return to her mother's household; (4) she did not get an opportunity to live in Apartment 2A continuously for the required one year period due to the timing of her mother's death; and (5) NYCHA accepted her payments for use and occupancy for Apartment 2A. Petitioner asks this court to take these factors into consideration together with her positive qualities, and grant this petition annulling and reversing respondent's Determination.

Accepting the accuracy of petitioner's assertions and liberally construing the petition of this pro se litigant (*Pezhman v City of New York*, 29 AD3d 164, 168 [1st Dept 2006] [internal citation and quotations omitted]), the court is nevertheless, constrained to deny the petition.

The New York State Legislature established NYCHA to administer federally funded housing programs within the City of New York in accordance with the regulations promulgated by the United States Department of Housing and Urban Development (HUD). NYCHA's authority in administering these programs "is circumscribed by detailed federal requirements regarding who may occupy such a public housing unit, which also impose obligations on tenants benefitted by their occupancy of public housing" (*Matter of Abdil v Martinez*, 307 AD2d 238, 239 [1st Dept 2003]). The Federal regulations provide, in relevant part:

A lease shall be entered into between the PHA [NYCHA] and each tenant of a dwelling unit which . . . shall state . . . [t]he composition of the household as approved by the PHA [NYCHA] (family members and any PHA [NYCHA]-approved live-in-aide). . . . The family must request PHA [NYCHA] approval to add any other family member as an occupant of the unit (24 CFR § 966.4 [a] [1] [v]; *see also* 24 CFR § 960.203 [a]).

As stated above, the regulations promulgated by HUD are implemented by the rules contained in

NYCHA's Management Manual, which specifically provides, at Section III (C) (3), in relevant part:

Original tenant family members . . . **who moved out** of the household and seek permission to rejoin the household:

- Persons in this category do **not** automatically obtain permission for permanent occupancy by virtue of their former occupancy, notwithstanding NYCHA's actual or constructive notice of the persons' return to the apartment. Such persons may obtain permission for permanent occupancy only if such permission is requested by the tenant of record and granted by the Housing Manager in writing (Verified Answer, Exhibit B, Amended Management Manual, emphasis in original).

This policy is repeated in the standard, NYCHA Resident Lease Agreement signed, most recently, by Mendoza on June 14, 2001. Section 5 (b) of the lease agreement states:

Tenant shall obtain the written consent of the Housing Manager of the development . . . before allowing any person to reside in the Leased premises other than a family member named in the Tenant's signed application. . . . who remains in continuous occupancy since the inception of the tenancy, since birth or since subsequent authorization by the Landlord (Verified Answer, Exhibit D).

Due to the well-documented lack of sufficient low-income housing in the City of New York and the many qualified families on waiting lists for these accommodations,² fairness dictates that the regulations mandated by HUD be strictly applied by NYCHA in its tenant selection process. Neither compassion, nor hardship to petitioner or other mitigating factors may be considered by the reviewing court (*Matter of Fermin v New York City Hous. Auth.*, 67 AD3d 433 [1st Dept 2009] [internal citations omitted]).

Accordingly, the only question is whether the Determination made by NYCHA on

² See Williams, Special Series: Developing Sustainable Urban Communities, *The Continuing Crisis in Affordable Housing: Systematic Issues Requiring Systematic Solutions*, 31 Fordham Urb L J 420 (2004); see also *Matter of McFarlane v New York City Hous. Auth.*, 1 Misc3d 744, 747 (Sup Ct, NY County 2003), reversed on other grounds 9 AD3d 289 (2004).

December 22, 2010, is supported by substantial evidence upon the whole record and not whether Firpi and her daughters are deserving candidates for this Apartment or for another low-income public housing accommodation (*see 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181 [1978] [internal citations omitted]). The hearing officer's conclusion that petitioner does not qualify as a remaining family member is confirmed by the Tenant Data Summary Sheet and not contradicted by the information contained on the annual Affidavit of Income report filled out by Mendoza on December 30, 2009. Inasmuch as petitioner has failed to produce evidence that she continuously resided in the Apartment for one year prior to February 19, 2010, with the knowledge and consent of Housing Management, it is

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

Dated: New York, New York
November 4, 2011

ENTER:



Hon. Judith J. Gishce, J.S.C.

UNFILED JUDGMENT

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