

Matter of Rivera v City of N.Y. Hous. Preserv. & Dev.
2011 NY Slip Op 33055(U)
November 22, 2011
Sup Ct, NY County
Docket Number: 107642/11
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Solomon
Justice

PART 55

ARLAND & RIVONA
- v -
NYC DHPD

INDEX NO. 107642/11
MOTION DATE 9/19/11
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to 7 were read on this motion to/for Art 78 relief

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

PAPERS NUMBERED	
1-3	_____
4-5	_____
6-7	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion petition is decided
in accordance with the annexed memorandum
decision, order and judgment.

FILED

NOV 23 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/22/11

JANE S. SOLOMON 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: IAS PART 55

----- X
In The Matter of the Application of
ARLANDO RIVERA,

Index No. 107642/11

Petitioner,

DECISION, ORDER and
JUDGMENT

-against-

THE CITY OF NEW YORK HOUSING
PRESERVATION AND DEVELOPMENT and
GOUVERNEUR GARDENS HOUSING CORPORATION,

Respondents.

FILED

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NOV 23 2011

Jane S. Solomon, J.:

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner seeks to set aside the decision of respondents Gouverneur Gardens Housing Corp. and New York City Department of Housing Preservation and Development (HPD) that rejected his application for residency in a Mitchell-Lama apartment complex. The petition also seeks an order directing that respondents accept an application in the name of petitioner's twenty-three year old son, Rafael Rivera (Rafeal), and put the son on a list for an apartment at Gouverneur Gardens.

The application process is administered by HPD, subject to rules governing HPD with respect to Mitchell-Lama housing (see Chapter 3, Title 28 of the Rules of the City of New York). The process involves HPD's receipt of applications, which then either are numbered upon receipt, or are subjected to a lottery to determine the order in which apartments are offered (28 RCNY § 3-02[h][3]).

[* 3]

Petitioner filed an application for an apartment in Gouverneur Gardens in 2003, listing himself and then-sixteen year old Rafael as proposed occupants. The application was assigned a number in September 9, 2003 (Petition, Ex. 3). At the time, petitioner and his son lived in an apartment in Masaryk Tower, another Mitchell-Lama building, with petitioner's wife. For the years 2004 through 2011, petitioner and his wife submitted to HPD household income affidavits showing they and Rafael were residents of the Masaryk Tower apartment.

In February 2011, petitioner was offered an apartment in Gouverneur Gardens. He asked to transfer the application to Rafael, now 23 year years old. The transfer request was rejected on the grounds that Rafael, based on his tender age, did not qualify as an applicant in when it was submitted in 2003. When petitioner was offered the opportunity to file an application in his own name, he filed one which HPD rejected because he already lived in a Mitchell-Lama apartment, as evidenced by the household income affidavits he and his wife filed.

Petitioner contends that HPD's refusal to transfer the application to Rafael was irrational, arbitrary and capricious because Rafael is now old enough to qualify as an applicant. He further contends that HPD's rejection of his resubmitted application was irrational because, although he resided in the

Masaryk Tower apartment, he and his wife were estranged, and he hoped to find a new place to live.

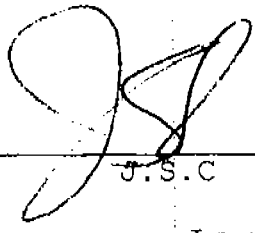
HPD persuasively argues that its determinations were rational, and not subject to reversal under CPLR Article 78. HPD's interpretation of the rules governing Mitchell-Lama applications reasonably requires that the applicant be qualified when the application is made, and that interpretation is entitled to judicial deference (*Gaines v DHCR*, 90 NY2d 545 [1997]).

Title 28 RCNY §3-02(h)(8)[i] provides that all eligibility requirements for age, residency and family composition must be met by the cut-off date for the lottery. Respondents provide no evidence that there was a lottery, rather than an assignment of an application number as also permitted by 28 RCNY §3-02(h)(3), but HPD does not cite a corollary rule for non-lottery applications. Nevertheless, its application of the rule here is sensible because it serves to limit applications to legitimate potential residents (see, *Gorelick v HPD*, NY Slip Op. 31165U [Sup Ct NY County, 2011]), rather than encouraging "placeholder" applications by others. Surely, no family may have more than one public housing accommodation. Accordingly, it hereby is

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

Dated: November 22, 2011

ENTER:



J.S.C

~~JANE G. COLEMAN~~
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