

Matter of White v New York City Hous. Auth.

2011 NY Slip Op 33163(U)

December 9, 2011

Supreme Court, New York County

Docket Number: 401908/2011

Judge: Joan B. Lobis

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

PRESENT: _____

PART 6

Index Number : 401908/2011

WHITE, ROSA MARY

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 10/26/11

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 33 were read on this motion to/for _____

PAPERS NUMBERED

174 - Petition

S-33

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

FILED

Upon the foregoing papers, it is ordered that this motion

DEC 12 2011

NEW YORK COUNTY CLERK'S OFFICE

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

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION & Order. The clerk is directed to enter judgment in accordance with this decision and order.

Dated: 12/9/11

[Signature]
JOAN B. LOBIS J.S.C.

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X

In the Matter of the Application of

ROSA MARY WHITE,

Petitioner,

Index No. 401908/11

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

Decision, Order and Judgment

-against-

FILED

NEW YORK CITY HOUSING AUTHORITY,

DEC 12 2011

Respondent.

-----X

JOAN B. LOBIS, J.S.C.:

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner, pro se litigant Rosa Mary White, brings this Article 78 proceeding, seeking to reverse the determination by respondent, the New York City Housing Authority ("NYCHA"), declaring her ineligible for public housing following a determination after hearing. The final determination was issued on April 27, 2011, following a hearing held before Chief Hearing Officer Tomicic-Hines on March 22, 2011.

Petitioner asserts that she resides at 388 Pearl Street, Apartment 7F, New York, New York 10038, in a housing complex known as the Alfred E. Smith Houses (the "Apartment"). Petitioner's mother, Saraphine White, was the tenant of record at the Apartment until her death on August 13, 2008. Petitioner states that she was part of the original family composition in 1971, but subsequently vacated.¹ In 2004, Saraphine White requested to have petitioner reinstated as a

¹ Petitioner fails to specify the particular year in which she vacated. A September 2, 2010 decision by the Borough Director states that the petitioner vacated the Apartment in 1996, while the August 9, 2010 decision by the Housing Manager states that petitioner vacated the Apartment in 1992.

household member, but this request was not approved because petitioner's criminal background rendered her ineligible at that time. Petitioner contends that she has occupied the Apartment intermittently since 2002 and that she has continued to occupy the Apartment since Saraphine White's death. Petitioner seeks to stay in the Apartment as a remaining family member.

On August 7, 2010, petitioner met with the Housing Manager, Eloise Tucker ("Ms. Tucker"), in her effort to remain in the Apartment. Ms. Tucker disapproved her request, noting that although petitioner had once been an authorized occupant, she vacated the apartment and did not thereafter obtain management's permission to rejoin the household. Ms. Tucker additionally noted that the 2004 application submitted on petitioner's behalf was denied because a criminal background check had revealed that she was ineligible for public housing status.

On September 2, 2010, the Borough Director, Eneida Reverón, agreed with the disposition of the Housing Manager denying petitioner's request for remaining family member status. Under "Findings and Reasons," the determination states that at the time of her death on August 13, 2008, Saraphine White was the tenant of record and the sole occupant in the Apartment. The decision reiterated that petitioner's 2004 request to rejoin the household was denied due to the criminal background check.

Petitioner appealed the September 2, 2010 determination to a hearing. After three adjournments, the hearing was held on March 22, 2011 before Hearing Officer Tomicic-Hines. Petitioner appeared on her own behalf without legal counsel. She testified that she is fifty-two (52) years old. To show that she resided at the Apartment, petitioner submitted into evidence public

assistance benefits correspondence addressed to her at the Apartment. Additionally, petitioner submitted a 2009 W-2 form and death certificates for her father and her brother. To show that she paid rent and utilities at the Apartment, petitioner submitted into evidence a receipt of a money order from 2010 and telephone and cable television bills from November 2010. In addition, petitioner submitted Saraphine White's initial application for public housing which showed that petitioner was an original household member.

Petitioner further testified that she vacated the Apartment at some point, and that Management was unable to reinstate her status as a household member in 2004 due to her arrest four years prior. Petitioner stated that in 2008, she received a one-year sentence for attempted criminal sale of a controlled substance, but that she has since stopped using drugs. She also stated that she has paid the rent at the Apartment since she resumed living there.

Housing Assistant Tracey Woodard ("Ms. Woodard") testified on behalf of NYCHA, stating that the affidavits of income signed by Saraphine White between 2004 and 2006 listed Saraphine White as the sole household member in the Apartment. NYCHA submitted into evidence Saraphine White's death certificate, and Ms. Woodard testified that Saraphine White was also the sole occupant at the time of her death. In addition, NYCHA submitted a police report from petitioner's arrest for sale of a controlled substance to an undercover police officer in January 2000, and a certificate of disposition indicating that petitioner pled guilty to attempted criminal sale of a controlled substance in the third degree, for which she was sentenced to a one-year imprisonment and a six-month suspension of her license. NYCHA further submitted relevant pages of its Application Manual, which states that individuals with a C felony conviction, such as attempted sale

of a controlled substance, are ineligible for admission until at least six years after the sentence has been served with no additional or pending charges.

Hearing Officer Tomicic-Hines issued a decision, dated March 30, 2011, denying petitioner's grievance. The denial is based on a number of grounds: Saraphine White's 2004 request for petitioner to rejoin the household was denied; Saraphine White listed herself as the sole occupant on her Affidavits of Income prior to her death; and petitioner is currently barred from eligibility for public housing due to her January 2000 arrest and August 2008 plea to a C felony.

As a pro se litigant, the court must construe petitioner's pleadings liberally. Pezhman v. City of New York, 29 A.D.3d 164, 168 (1st Dep't 2006), citing Rosen v. Raum, 164 A.D.2d 809, 811 (1st Dep't 1990). In examining petitioner's arguments, they will be considered as challenging the NYCHA's determination pursuant to C.P.L.R. § 7803(3), on the grounds that the determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion."

In an Article 78 proceeding, the court's review of an administrative agency's determination is limited to whether the decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. C.P.L.R. § 7803(3); see In re Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified * * * and whether the administrative action is without foundation in fact.'" Id. (citation omitted) (asterisks in original).

A determination is considered "arbitrary" when it is made "without sound basis in reason and is generally taken without regard to the facts." Id.

Here, it is undisputed that although petitioner was once a member of the household, she vacated at some point; that Saraphine White's 2004 request to add petitioner as household member was denied; that Saraphine White did not list petitioner in her income affidavits in the couple of years leading up to her death; and that petitioner was convicted of a C felony, which renders her ineligible for public housing until March 2015, the sixth year following the completion of her sentence. Thus, this Court is constrained to find that it was not arbitrary and capricious for respondent to find that petitioner cannot succeed her mother, Saraphine White, as a remaining family member in the Apartment. In re Guzman v. New York City Hous. Auth., 85 A.D.3d 514, 514 (1st Dep't 2011); In re Filonuk v. Rhea, 84 A.D.3d 502 (1st Dep't 2011); In re Aponte v. New York City Hous. Auth., 48 A.D.3d 229 (1st Dep't 2008); see In re Faison v. New York City Hous. Auth., 283 A.D.2d 353, 357 (1st Dep't 2001); In re McFarlane v. New York City Hous. Auth., 9 A.D.3d 289, 290 (1st Dep't 2004); contra In re Gill v. Hernandez, 22 Misc. 3d 390 (Sup. Ct. N.Y. Co. 2008). Accordingly, it is hereby

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

FILED

Dated: Dec. 9, 2011

DEC 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

ENTER:



JOAN B. LOBIS, J.S.C.