

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

2012 NY Slip Op 31628(U)

June 18, 2012

Supreme Court, New York County

Docket Number: 400560/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of  
KENDELL EDWARDS,

Petitioner,

Index No. 400560/12

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.  
-----X

**FILED**

JUN 20 2012

NEW YORK  
COUNTY CLERK'S OFFICE

**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner brings this petition seeking to reverse respondent the New York City Housing Authority's ("NYCHA") decision dismissing his remaining-family-member grievance for failure to pay use and occupancy. NYCHA cross-moves to dismiss the petition. For the reasons set forth more fully below, the petition is dismissed.

The relevant facts are as follows. Petitioner's mother, Flora Edwards, now deceased, used to live in apartment 11A at 535 Havemeyer Avenue in the Bronx, part of NYCHA's Castle Hill Houses. Ms. Edwards died in May 2011. In conjunction with leasing public housing, Ms.

Edwards was required to fill out affidavits of income which included a section titled "Family Composition." Petitioner was last included on Ms. Edwards affidavit as part of the family composition in 1980. He was not listed in the family composition on Ms. Edwards's nine most recent affidavits of income. In some of those years, he was listed as using the apartment as his mailing address. Ms. Edwards had also not requested or received written permission for petitioner to live with her in her household, as was required by NYCHA.

After Ms. Edwards's death, petitioner's brother Dennis went to the development management office inquiring about a remaining-family-member claim. The manager informed him that he had 14 days to make such a claim and that he must be current in use and occupancy in order to pursue that claim. The manager gave Dennis a letter stating this as well. Dennis wrote a letter requesting a remaining-family-member grievance for himself and petitioner. The letter, dated September 26, 2011, stated that he and petitioner had "resided in the apartment periodically for decades" and that they returned to help her with daily tasks as her health declined. The property manager denied their grievances because Ms. Edwards had not requested or received the necessary permission for Dennis or petitioner to be included as members of her household. The District Office then denied the grievances as well because petitioner and Dennis failed to make any showing to support their claims and were not current in use and occupancy. At the time of the decision, in November 2011, petitioner and Dennis owed use and occupancy arrears of \$498.50 and have made no subsequent payments. The arrears have accrued and now total \$1,667.73.

Petitioner commenced this Article 78 proceeding on March 9, 2012. He does not contest NYCHA's allegation that he has not paid use and occupancy during the pendency of his

grievance.

NYCHA allows a “remaining family member” to take over a deceased tenant’s lease if the applicant who wishes to succeed to the lease as a tenant of record establishes that he:

- a) moved into the apartment lawfully (i.e. was listed on the housing application and authorized to reside in the apartment at initial move-in; was born into/adopted into/became a ward of the authorized family; or permanently moved in with the written permission of development management);
- b) remained in the apartment continuously after lawful entry;
- c) remained in the apartment for not less than one year after the date of lawful entry and prior to the date the tenant of record vacates the apartment or dies (the “one-year requirement”); and
- d) is otherwise eligible for public housing in accordance with the admissions standards for applicants.

Management Manual, Chapter IV - Occupancy, Subdivision XII(A)-(B). To establish continuous occupancy and compliance with the one-year requirement, the occupant must be named on all affidavits of income from the time he lawfully enters the apartment until all tenants/lessees move out of the apartment or die. *Id.* At XII(A)(2). Where a petitioner never obtained NYCHA’s written permission to reside in the apartment, NYCHA’s determination that petitioner does not qualify as a remaining family member is “based upon a fair interpretation of [NYCHA’s] rules and regulations and is not arbitrary and capricious. *Collazo v NYCHA*, 93 A.D.3d 475 (1<sup>st</sup> Dept 2012). NYCHA also requires that a claimant must pay use and occupancy during the pendency of a grievance. Management Manual, Chapter XII(D)(2)(b). Failure to do so provides grounds for NYCHA to deny a remaining family member grievance. *See Hawthorne v NCYHA*, 81 A.D.3d 420 (1<sup>st</sup> Dept 2011). NYCHA’s regulations also provide that persons claiming they are a remaining family member must make a “reasonable showing” that they are in the apartment with

