

Matter of Seymour v Rhea

2012 NY Slip Op 31841(U)

July 3, 2012

Supreme Court, New York County

Docket Number: 402327/11

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of the Application of FREDERICK SEYMOUR,

INDEX NO. 402327/11

Petitioner,

MOTION DATE _____

-against-

MOTION SEQ. NO. 001

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

Respondents.

MOTION CAL NO. _____

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... _____

1, 2

Answering Affidavits- Exhibits _____

3

Replying Affidavits _____

FILED

CROSS-MOTION: YES NO

JUL 11 2012

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

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 7/3/12

Donna M. Mills

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
In the Matter of the Application of FREDERICK
SEYMOUR,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 402327/11

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

Respondents.

-----X

FILED

JUL 11 2012

NEW YORK
COUNTY CLERK'S OFFICE

DONNA M. MILLS, J.:

In this special proceeding pursuant to C.P.L.R. Article 78, Petitioner Frederick Seymour ("Petitioner") challenges a determination by the Respondent, New York City Housing Authority ("Housing Authority"), which dismissed his grievance to succeed as a remaining family member to the apartment formerly leased to his deceased mother, Edna Seymour ("Ms. Seymour") without an administrative hearing. The Housing Authority cross moves to dismiss the petition pursuant to CPLR §§ 3211 (a) (7) and 7804(f).

Petitioner is the son of a deceased tenant of an apartment unit of public housing administered by Respondent Housing Authority. Respondent, inter alia, administers federally funded housing programs in accordance with regulations promulgated by the United States Department of Housing and Urban Development (HUD). Federal policy provides that public housing authorities should be accorded "the maximum amount of responsibility and flexibility in program administration" so as to fulfill the obligation to provide safe and decent housing to low income families (42 USC § 1437 [a] [1] [C]). However, the Housing Authority's authority in this regard is not unfettered. Rather, it 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. HUD regulations mandate that housing authorities promulgate and adhere to certain tenant selection guidelines (24 CFR 960.202 [a]).

In order to determine if an occupant qualifies as a remaining family member, the Housing Authority provides a multi-step grievance procedure in which the claimant bears the burden of proof with review by the Property Manager, the District Office, an impartial hearing officer, and the Housing Authority's Board.

After Ms. Seymour's death on January 2, 2010, Petitioner requested a remaining-family-member grievance to determine whether he qualified to succeed to his mother's lease. He also requested that the monthly rent be reduced based on his income level. He was advised at that time that he should continue to pay use and occupancy at a rate of \$755, the amount that his mother previously paid. At that time he paid \$1,500 for January and February rent. In or about April 2010, Petitioner made his last payment of rent in the amount of \$1,554 for March and April. He was also told at that time that his paperwork for a remaining-family-member grievance had been lost and that he must re-submit the application.

Both the Property Manager on December 20, 2010 and the District Office on April 26, 2011 denied Petitioner's grievance because Petitioner had failed to pay use and occupancy. It is undisputed that Petitioner had failed to make any use and occupancy payments since April 2010, and at the time of the District Offices decision one year later, his arrears totaled over \$9,000.

Respondent Housing Authority's rule (New York City Housing Authority [NYCHA] Management Manual, ch VII, § IV [E] [1] [c] [2]) does require continued payment of use and occupancy as a condition precedent to commencement of a grievance on entitlement to status as a remaining family member (see Matter of Garcia v Franco, 248 AD2d 263, 264-265 [1998]).

In the project grievance summary dated December 20, 2010, the Housing Authority found that Petitioner lived consistently with his mother and had passed the Criminal Background Check. However, his denial of a lease was based on the fact that he was not current in the payment of use and occupancy and owed \$9,058.36.

Respondent was informed that effective November 1, 2011, the Housing Authority belatedly adjusted Petitioner's monthly rate of use and occupancy from \$755

per month, the rate at the time of his mother's death, to \$258 per month, the rate based on the present household income. The Housing Authority also issued a credit of \$11,980.65. That amount equaled: (1) the arrears at the time of Petitioner's mother's death, plus (2) the difference between the prior rate of use and occupancy, \$755, and the new rate, \$258, from February 1, 2010 (the first month after his mother's death) through October 31, 2010. Following the issue of the credit, Petitioner still owed \$2,620.

The role of a court in its examination of an administrative decision, pursuant to CPLR Article 78, is a limited one. The function of judicial review in an Article 78 proceeding is not to weigh the facts and merits de novo and substitute the court's judgment for that of the agency's determination. Greystone Management Corp. v. Conciliation and Appeals Bd., 94 A.D.2d 614, 616, 462 N.Y.S.2d 13 (1st Dept.1983), *aff'd*, 62 N.Y.2d 763, 477 N.Y.S.2d 315, 465 N.E.2d 1251 (1984). Rather, the standard of review in an Article 78 is whether an administrative determination is arbitrary or capricious, without a rational basis in the administrative record. *Id*; see also, Pell v. Board of Education, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974).

The central issue that this Court is confronted with, is whether the decision to deny Petitioner's grievance in December 2010 was arbitrary and capricious. The question that this Court grapples with is whether the Petitioner was current in paying use and occupancy in December 2010. The Housing Authority determined that Petitioner was not current, however its determination, at the time, was not based on the recalculated and proper rate of use and occupancy.

It cannot be seriously disputed that a substantial right is affected in this case dealing with succession rights. Petitioner has apparently lived at the subject premises for more than three decades with the acquiescence of NYCHA, which now wishes to evict him. Loss of possessory interest in one's home is a severe penalty which affords an individual a cause of action. U.S. v. Premises Known as 281 Syosset Woodbury Road, 791 F.Supp. 61, 62-63 (E.D.N.Y.1992); see also, Corchado v. Popolizio, 171 A.D.2d 598, 567 N.Y.S.2d 460 (1st Dept.1991). A remaining family member's succession rights are recognized for that reason. Robinson v. Finkel, 194 Misc.2d 55, 748 N.Y.S.2d 448 (N.Y.Sup.Court 2002). Indeed, federal regulations, promulgated by the Department of Housing and Urban, and NYCHA rules, enacted pursuant to those

same federal regulations, recognize succession rights and mandate that legitimately remaining head of households are entitled to succession rights. See 24 CFR 960.204(a); NYC Management Manual Ch. 7. Sub. IV(E)(1)(B)(3). Properly promulgated substantive agency regulations have also the force and effect of law. Doe v. Syracuse School, 508 F.Supp. 333, 337-338 (N.D.N.Y.1981).

Since a significant deprivation is at stake, this Court cannot ignore the Housing Authority's possible circumvention of its own rules to deny Petitioner succession rights to his deceased mother's former residence.

Accordingly it is

ORDERED that Petitioner's motion is granted to the limited extent of ordering the Respondent to afford the Petitioner an opportunity to have a hearing to determine if Petitioner was in compliance of Respondent's rules at the time of the December 2010 grievance; it is further

ORDERED that Respondent's cross motion to dismiss is denied.

Dated: 7/3/12

ENTER: *J.M.M.*
J.S.C.

FILED

JUL 11 2012

NEW YORK
COUNTY CLERK'S OFFICE