

Matter of Reyes v Wambua
2012 NY Slip Op 32188(U)
August 7, 2012
Supreme Court, New York County
Docket Number: 400290/2012
Judge: Barbara Jaffe
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE Jaffe
J.S.C. Justice

PART 5

Index Number : 400290/2012
REYES, OMAR MACIAS
vs.
WANBUA, MATHEW
SEQUENCE NUMBER : 001
ARTICLE 78 CAL. #86

INDEX NO. _____
MOTION DATE 6/12/12
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for Voluntary Disposition of Child

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2, 3, 4</u>
Replying Affidavits _____	No(s). <u>5</u>

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

DECIDED IN ACCORDANCE WITH
ADVERSE EFFECT OF ~~THE~~ 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: 8/7/12
AUG 07 2012

Barbara Jaffe, J.S.C.
BARBARA JAFFE

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 5

-----X
In the Matter of the Application of:
OMAR MACIAS REYES,

Petitioner,

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

-against-

MATHEW WAMBUA, as Commissioner of the New
York City Department of Housing Preservation and
Development, and MUTUAL REDEVELOPMENT
HOUSES, INC.,

Respondents.
-----X

BARBARA JAFFE, JSC:

For petitioner:

Virginia M. Goggin, Esq.
Yisroel Schulman, Esq.
New York Legal Assistance Group
7 Hanover Square, 18th Floor
New York, NY 10004
212-613-5065

For HPD:

Yungbi A. Jang, ACC
Michael A. Cardozo
Corporation Counsel
100 Church Street
New York, NY 10007
212-788-0757

For Mutual:

Michael Schwartz, Esq.
Barry Mallin & Assocs., P.C.
132 Nassau Street, Suite 522
New York, NY 10038
212-285-1200

Index No. 400290/12

Argued: 6/12/12
Motion Seq. No.: 001
Motion Cal. No.: 86

DECISION & JUDGMENT

By notice of petition dated February 3, 2012, petitioner brings this Article 78 proceeding seeking an order: (1) annulling and reversing respondent New York City Department of Housing Preservation and Development's (HPD) denial of his application for succession rights to Manhattan apartment 17F at 350 West 24th Street, a building owned by respondent Mutual Redevelopment Houses, Inc. (Mutual); (2) directing Mutual to issue him an occupancy agreement, or in the alternative, remanding the matter to HPD for an evidentiary hearing; (3) awarding him costs and fees; and (4) awarding him attorney fees. Respondents oppose.

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).

I. REGULATORY BACKGROUND

The New York Private Housing Finance Law (PHFL) was enacted to address the state's shortage of safe, sanitary, and affordable housing for low-income families. (PHFL §§ 11, 101). The subject apartment is governed by Article 5 of the PHFL, which provides that a housing redevelopment company, such as Mutual, must execute with HPD a regulatory agreement setting forth, *inter alia*, the terms and conditions of tenant eligibility and succession.

Section 203 of Mutual's regulatory agreement with HPD mandates that apartments be made "available exclusively for persons or families of low or moderate income whose probable annual aggregate income at the time of admission does not exceed [a certain amount]" (Mutual Ver. Ans., Exh. A). To demonstrate financial eligibility, a tenant must annually provide, *inter alia*, an "income affidavit" listing each person with whom he or she resides and that person's annual income. (*Id.*, Exhs. A, E; HPD Ver. Ans., Exh. B).

Section 210(d)(i) of the agreement sets forth the occupancy rights of a tenant's family members. A tenant's domestic partner is considered his or her family member and may succeed the tenant in occupying the apartment "as long as (A) the [tenant's] occupancy agreement was not terminated for cause by [Mutual], and (B) the apartment was said [] [d]omestic [p]artner's primary residence at the time the occupancy agreement was terminated." (Mutual Ver. Ans., Exh. A). "Domestic partner" is defined in section 210(a)(ii) as an individual:

18 years of age or older who at the time determination of such status is made has been residing with the tenant/cooperator(s) in the apartment as a primary residence . . . for at least two years, *who has been listed on the income affidavit of the tenant/cooperator for at least the two consecutive reporting periods immediately prior to the date of such determination* and who can prove emotional and financial commitment and interdependence as of the date of such determination between such person and a tenant/cooperator of the apartment

[* 4]
(Id. [emphasis supplied]). The section sets forth a non-exhaustive list of factors to be considered in determining whether the domestic partner has demonstrated emotional and financial commitment and interdependence. (*Id.*).

II. FACTUAL BACKGROUND

Robert Day was the tenant of record for the subject apartment until his death on February 12, 2010. (HPD Ver. Ans., Exhs. B, C). His occupancy agreement is silent as to the requirements for obtaining succession rights to the apartment. (*Id.*, Exh. B).

The income affidavit filed by Day for 2008 unambiguously calls for the listing of all members of the household “regardless of earning status” (Mutual Ver. Ans., Exh. E). Day is the sole household member listed and he died before the 2009 affidavit was due. (*Id.*, Exh. B).

By letter dated July 8, 2010, petitioner sought succession rights to the apartment, identifying Day as his “life-partner” and claiming that he had resided in the apartment with Day since June 2007. (*Id.*, Exh. D). He offered evidence of their relationship, including birthday and holiday cards they exchanged, a letter from a neighbor dated June 26, 2010, reflecting his knowledge that Day and petitioner were a romantic couple and that petitioner cared for Day when he became ill, an undated card congratulating the couple on their engagement, a letter dated February 25, 2010 reflecting that petitioner is the sole beneficiary of Day’s pension, and Day’s death certificate on which petitioner is identified as his domestic partner. (*Id.*, Exh. D).

By letter dated April 14, 2011, Mutual denied petitioner’s request on the grounds that: (1) he failed to provide sufficient documentation of his relationship with Day; (2) his name does not appear on any of Day’s income affidavits; and (3) he failed to demonstrate that the apartment was his primary residence. (*Id.*, Exh. E). On June 15, 2011, petitioner appealed Mutual’s

[* 5]

decision to HPD, arguing, *inter alia*, that the absence of his name from Day's income affidavit should not preclude him from obtaining succession rights as he earned no income and Day thus received no undue benefit from remaining in low-cost housing. (*Id.*, Exh. G).

By decision dated October 6, 2011, rendered without a hearing, an HPD administrative hearing officer denied petitioner's appeal on the sole ground that his name was not listed on Day's most recent income affidavit, noting that therefore "neither his family relationship to the tenant nor his co-residency with the tenant need be determined." (Mutual Ver. Ans., Exh. D). She thus did not address petitioner's contention that the absence of his name from the income affidavit is excused because he earned no income. (*Id.*).

III. CONTENTIONS

Petitioner asserts that the hearing officer's denial of his appeal was arbitrary and capricious as she failed to consider the totality of the circumstances, including the nature of his relationship with Day and his lack of income, and instead relied solely on the absence of his name from Day's income affidavit. (Ver. Pet.).

In opposition, HPD and Mutual maintain that the hearing officer rationally interpreted the regulatory agreement in denying petitioner succession rights notwithstanding petitioner's claim that he earned no income, as the income affidavit unambiguously specified that all household members be included regardless of earning status. (HPD Mem. of Law in Opp.; Mutual Ver. Ans.).

In reply, petitioner contends Day's failure to include his name on his income affidavit is not fatal to his application for succession rights, because he earned no income. (Affirmation of Virginia M. Goggin, Esq., in Reply, dated May 16, 2012).

IV. ANALYSIS

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts." (*Matter of Pell v Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]; *Matter of Kenton Assocs., Ltd. v Div. of Hous. & Community Renewal*, 225 AD2d 349 [1st Dept 1996]). Therefore, an agency's determination "is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *affd* 11 NY3d 859 [2008]). Similarly, "an agency's interpretation of its own regulations is entitled to deference if that interpretation is not irrational or unreasonable." (*Matter of IG Second Generation Partners, L.P. v New York State Div. of Hous. & Community Renewal*, 10 NY3d 474, 481 [2008]).

In denying petitioner's appeal, the hearing officer relied on the plain language of Mutual's regulatory agreement requiring, *inter alia*, that petitioner be listed on the income affidavit of the tenant/cooperator for at least the two consecutive years immediately before the determination. Assuming, however, as petitioner claims, that he earned no income, Day still would have been qualified to remain as a tenant even if he had listed petitioner on the affidavit. The hearing officer declined to address this circumstance, thereby failing to consider the explanation offered by petitioner for Day's failure to include his name on the affidavit. (*Cf. Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 91 AD3d 481 [1st Dept 2012] [failure to file

income affidavit not fatal to succession claim under 9 NYCRR 1727-8.2 as long as excuse for failure proffered and other evidence of residency offered]; *Matter of Callwood v Cabrera*, 49 AD3d 394 [1st Dept 2008] [petitioner not entitled to succession rights pursuant to 9 NYCRR 1727-8.2 absent explanation for tenant's failure to include his name on income affidavit]; *Matter of Gilbert v Perine*, 52 AD3d 240 [1st Dept 2008] [same]). As the purpose of the income affidavit is to confirm a tenant's financial eligibility for housing (*see supra*, I.), and absent any warning that a failure to list all occupants will result in the denial of succession rights (*see supra*, II.), the denial of petitioner's appeal absent at least an explanation for rejecting his argument beyond bureaucratic rejoinder, glorifies form over substance. (*See Voorhees v Bates*, 308 NY 184 [1954] [Tax Commission's determination "exalt[ed] form over substance" in relying on contents of petitioner's tax return in calculating his income notwithstanding petitioner's uncontradicted explanation that amounts were not income]; *Matter of 62nd & 1st LLC v New York City*, 16 Misc 3d 1103A, 2007 NY Slip Op 51236U [Sup Ct, New York County 2007] [agency's determination arbitrary and capricious as it employed "overly literal" application regulation and ignored realities of case]).

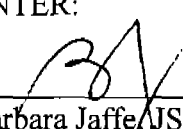
To that extent, the hearing officer's denial of petitioner's appeal is arbitrary and capricious. The matter is thus remanded for consideration of petitioner's argument that he satisfactorily explained the absence of his name from the income affidavit. Should the hearing officer find that the absence of petitioner's name is satisfactorily explained, she must then consider whether petitioner is otherwise eligible for succeeding in Day's tenancy.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is granted to the extent that the instant matter is remanded to respondent New York City Department of Housing Preservation and Development for reconsideration of petitioner's appeal in accordance with this decision and judgment.

ENTER:


Barbara Jaffe/JSC

BARBARA JAFFE
J.S.C.

DATED: August 7, 2012
New York, New York

AUG 07 2012

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).