

<b>Matter of Lara v New York City Hous. Auth.</b>
2012 NY Slip Op 32748(U)
October 25, 2012
Supreme Court, New York County
Docket Number: 401111/2012
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

HON. ARLENE P. BLUTH

PRESENT:

Justice

PART 4

Index Number : 401111/2012  
LARA, JUAN  
vs.  
NYC HOUSING AUTHORITY  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION/SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 2, were read on this motion to for Article 78

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

No(s) 2

Replying Affidavits \_\_\_\_\_

No(s) \_\_\_\_\_

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

DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER

**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).

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

Dated: 10/25/12

APB, J.S.C.

- 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

**SUPREME COURT OF THE STATE OF NY  
COUNTY OF NEW YORK: PART 4**

Index No.: 401111/12

**In the Matter of the Application of  
Juan Lara,**

*Petitioner,*

*-against-*

**DECISION, ORDER  
AND JUDGMENT**

**New York City Housing Authority,**

*Respondent.*

**Present: HON. ARLENE P. BLUTH**

Petitioner, who is self represented, commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) Determination of Status dated March 21, 2012 which adopted Hearing Officer Miller's February 23, 2012 decision made after a hearing. In her decision, the hearing officer denied petitioner's remaining family member claim to apartment 4E at 55 East 102<sup>nd</sup> Street in Manhattan. Petitioner's mother, Rosa Lara, was the tenant of record of the subject apartment until her death on November 2, 2008. NYCHA opposes the petition.

It is undisputed that petitioner had once been a member of his mother's household, but by letter dated October 8, 2004, he informed NYCHA that he had moved out of the subject apartment.

After the five-session hearing held on 11/19/09, 4/14/10, 8/19/11, 10/19/11 and 2/13/12, where petitioner was assisted by a guardian ad litem, the hearing officer did not sustain petitioner's remaining family member grievance. She noted that petitioner was not listed as an additional occupant on his mother's 2008 Affidavit of Income, and specifically found that petitioner did not establish that he had management's written permission to rejoin his mother's household. The hearing officer properly rejected petitioner's assertion that a letter, from either

Ms. Rosa's treating doctor or from Ms. Rosa's home care attendant (both submitted by petitioner), suggesting that Ms. Rosa "wanted to put petitioner on the lease" established petitioner's entitlement to remaining family member status.

#### Standard of Review

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis in reason and... without regard to the facts" (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]). Moreover, the determination of an administrative agency, "acting pursuant to its authority and within the orbit of its expertise, 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 New York Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

Gaining succession as a remaining family member requires an occupant to (1) move lawfully<sup>1</sup> into the apartment and (2) qualify as a specified relative of the tenant of record and (3) remain continuously in the apartment for at least one year immediately before the date the tenant of record vacates the apartment or dies and (4) be otherwise eligible for public housing in

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<sup>1</sup>The occupant moves in lawfully if he or she: (1) was a member of the tenant's family when the tenant moved in and never moved out or (2) becomes a permanent member of the tenant's family after moving in (or after moving back in) as long as the tenant of record seeks and receives NYCHA's written approval or (3) is born or legally adopted into the tenant's family and thereafter remains in continuous occupancy up to and including the time the tenant of record moves or dies. (See NYCHA Management Manual, ch IV, sub IV, section (J)(1).

accordance with NYCHA's rules and regulations. See NYCHA Occupancy and Remaining Family Member Policy Revisions General Memorandum (GM) 3692 Section IV (b), as revised and amended July 11, 2003 (exh B to answer).

The requirement that permission is necessary is enforceable. See *Aponte v NYCHA*, 48 AD3d 229, 850 NYS2d 427 [1st Dept 2008] "The denial of petitioner's [remaining family member] grievance on the basis that written permission had not been obtained for their return to the apartment is neither arbitrary nor capricious." See also *NYCHA v Newman*, 39 AD3d 759 (1<sup>st</sup> Dept 2007); *Hutcherson v NYCHA*, 19 AD3d 246 (1<sup>st</sup> Dept. 2005) (denied remaining family member status because written permission to move in was not obtained).

In his petition, petitioner seeks to reverse NYCHA's determination on the following grounds: his mother's illness prevented her from submitting a request to have him rejoin her household, the absence of notes in the apartment folder "required the entry of an Adverse Inference against NYCHA", he suffers from several physical and mental conditions, and has nowhere else to live. But petitioner admits that his mother never submitted the paperwork to request permission to be added to the lease and that permission was never granted.

None of these grounds states a basis for reversing NYCHA's decision to deny his remaining family member grievance. Petitioner acknowledges in his petition that his mother never submitted a permission request for him to rejoin her household. Even if NYCHA had a complete file, the most it would have indicated is what petitioner claims: that his mother intended to ask that he be added as an authorized occupant but never submitted the required paperwork and was never given the permission. As such, the hearing officer's decision was rational and in accordance with NYCHA's rules and regulations. See *Ruiz v New York City Hous. Auth.*, 81

AD3d 465,466 (1<sup>st</sup> Dept 2011). Additionally, this Court lacks the authority to consider mitigating circumstances or potential hardship as a basis for annulling NYCHA's determination (*see Guzman v NYCHA*, 85 AD3d 514, 925 NYS2d 59 [1st Dept 2011]).

Accordingly, it is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

This is the Decision, Order and Judgment of the Court.

**Dated: October 25, 2012**  
New York, New York

  
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**HON. ARLENE P. BLUTH, JSC**