

Matter of Burns v New York City Hous. Auth.
2012 NY Slip Op 33001(U)
December 14, 2012
Supreme Court, New York County
Docket Number: 401771/2012
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 : 401771/2012
BURNS, LATOYA
VS.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for Art. 78
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

No(s) 1
No(s) 2
No(s) 3

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: 12.14.12

[Signature], 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.: 401771/12

**In the Matter of the Application of
Latoya Burns,**

**DECISION, ORDER
AND JUDGMENT**

Petitioner,

-against-

Present: HON. ARLENE P. BLUTH

New York City Housing Authority,

Respondent.

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

The self-represented petitioner commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) determination denying her succession rights as a remaining family member to apt. 14 B at 110 East 99th Street in Manhattan which was formerly leased to Vasco Sampson, who petitioner claims is her grandfather. Mr. Sampson was the tenant of record of the subject apartment until his death on September 8, 2011. NYCHA opposes the petition.

By decision dated July 6, 2012, the Borough Manager, Rollin Deas, dismissed petitioner's grievance on the grounds that she failed to make any showing to substantiate her remaining family member grievance. Specifically, Mr. Deas found that petitioner had not supplied documents proving that she was in fact Mr. Sampson's granddaughter, had not presented any proof that she was an authorized occupant of the apartment, and owed use and occupancy arrears of \$6,898.66. Because her grievance was dismissed, petitioner was not entitled to appeal the Borough Office's disposition to a hearing officer (see exhibit P-District Grievance Summary).

In paragraph 23 of the Answer, NYCHA indicates that approximately three months later, petitioner provided income documents and NYCHA retroactively adjusted petitioner's use and occupancy from \$802.60 to \$235.60 per month for the 10 month period from October 2011 through July 2012. The credit of \$6,852 reduced the amount of the use and occupancy arrears petitioner owed at the time of Mr. Deas's decision to \$1,188.66.

Standard of Review

The "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarbough v Franco*, 95 NY2d 342, 347 [2000], quoting *Matter of Fanelli v New York City Conciliation & Appeals Board*, 90 AD2d 756 [1st Dept 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy-Cullen Storage Co. v Board of Elections of the City of New York*, 98 AD2d 635, 636 [1st Dept 1983]). Once the court finds that a rational basis exists for the agency's determination, then the court's review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v Glasser*, 30 NY2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if the court finds that there is no rational basis for the agency's determination. (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]).

Here, petitioner has not demonstrated that Mr. Deas's determination was arbitrary, capricious, or an abuse of discretion. NYCHA's rules (NYCHA's Management Manual, ch VII, § IV [E] [1] [c] [2]) require that use and occupancy be up-to-date as a condition precedent to pursuing a remaining family member status grievance (also set forth in the grievance

procedures instructions annexed as exhibit E to answer). As petitioner admits that she had failed to pay all the use and occupancy due, it was rational and reasonable for Mr. Deas to dismiss the grievance, and that determination was not an abuse of NYCHA's discretion. *Hawthorne v New York City Hous. Auth.*, 81 AD3d 420, 420-21 (1st Dept 2011) (NYCHA's rule requires continued payment of use and occupancy as a condition precedent to commencement of a grievance on entitlement to status as a remaining family member; petitioner's acknowledgment that he owed use and occupancy provided grounds for NYCHA's determination).

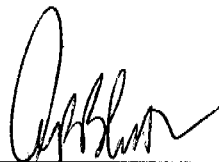
Additionally, petitioner does not dispute that the tenant of record never requested or received written permission from NYCHA for petitioner join his household. Petitioner's claim that Mr. Kamel, the housing manager knew she residing in the apartment is unavailing. Even if management had knew she was living there, NYCHA is not estopped from denying petitioner remaining family member status to an unauthorized occupant. *Rahjou v Rhea*, __AD3d __, 2012 NY Slip Op. 08259 (1st Dept Dec. 4, 2012).

Finally, while petitioner states that she has financial difficulties, mental and physical disabilities, and has no place to go if she is evicted from this apartment (pet., para. 3), 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: December 14, 2012
New York, New York



HON. ARLENE P. BLUTH, JSC