

Matter of Lefkowitz v New York City Hous. Auth.

2013 NY Slip Op 30050(U)

January 10, 2013

Sup Ct, New York County

Docket Number: 103392/12

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS

PART 58

Justice

FILED

In the Matter of the Application of
BELLA LEFKOWITZ,

JAN 14 2013 INDEX NO. 103392/12

COUNTY CLERK'S OFFICE
NEW YORK

Petitioner,

MOTION DATE _____

-against-

MOTION SEQ. No. 001

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

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

Answering Affidavits- Exhibits 2,3

Replying Affidavits 4

CROSS-MOTION: YES NO

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

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated:

1/10/13

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 BELLA
LEFKOWITZ,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 103392/12

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X

DONNA M. MILLS, J.:

In this special proceeding pursuant to C.P.L.R. Article 78, Petitioner Bella Lefkowitz ("Petitioner") challenges a determination by the Respondent, New York City Housing Authority ("Housing Authority"), which dismissed her grievance to succeed as a remaining family member to the apartment formerly leased to the deceased tenant of record, Sarah Hirsch ("Ms. Hirsch").

Ms. Hirsch was the tenant of record of apartment 14A at 85 Taylor Street in the Independence Towers development in Brooklyn. During her tenancy, Ms. Hirsch resided in the apartment with her husband, her children, and her grandchildren until those individuals died or left the household. Petitioner was never part of the household composition.

In October 2010, management sent a notice to Ms. Hirsch requesting that she visit the management office. In response to this notice, Petitioner's counsel faxed a letter to the Property Manager informing her Ms. Hirsch had died and requesting a remaining family member grievance.

Petitioner met with the Property Manager concerning her grievance on February 1, 2011 and claimed to be Ms. Hirsch's "granddaughter." The Property Manager concluded Petitioner was not entitled to a lease because Ms. Hirsch never obtained management's written permission for Petitioner to reside in the apartment. Petitioner met with the Borough Manager, who upheld the Property Manager's decision and

dismissed Petitioner's remaining family member grievance.

The Housing Authority subsequently sent Petitioner notices informing her and her counsel it had scheduled a grievance hearing on September 16, 2011, and the Housing Authority would interpose defenses to her claim, including the defense she does not qualify as a remaining-family-member under the Housing Authority's policies.

Petitioner at the administrative hearing before an impartial Hearing Officer on January 26, 2012, described Ms. Hirsch as her uncle's mother-in-law. Petitioner further claimed to have moved into Ms. Hirsch's apartment in early 2005, when Ms. Hirsch had a stroke. According to Petitioner, after Ms. Hirsch's stroke, she needed to have a female aide assist her "24/7." Petitioner conceded she "did not stay every day" but asserted she "pretty much lived there." She explained she "took the weekend off" but had her "stuff there." Petitioner testified and it is undisputed that on December 10, 2006, Ms. Hirsch passed away. Petitioner did not, however provide management with a copy of the death certificate until February 2011.

The Hearing Officer concluded that Ms. Hirsch did not seek or obtain management's written permission for Petitioner to occupy her apartment in the Housing Authority's Independence Towers development prior to her death in December 2006. The Hearing Officer based her determination on the following evidence; the seven affidavits of income Ms. Hirsch submitted between 1999 and 2006, in which Ms. Hirsch did not list Petitioner as a member of her household; the most recent tenant data summary and lease renewal for Ms. Hirsch's apartment, which did not list Petitioner as a member of the subject apartment; and the testimony of Housing Assistant Florence Pauls that Petitioner never had permission to reside in Ms. Hirsch's apartment. Petitioner did not introduce any evidence showing Ms. Hirsch ever sought or obtained written permission for Petitioner to reside in the apartment.

The Hearing Officer also found that Petitioner could not succeed to Ms. Hirsch's lease because she was Ms. Hirsch's son-in-law's niece, which is not one of the categories or relatives eligible for permanent permission or succession rights under the Housing Authority's policy.

This court's role in an Article 78 motion is limited to the determination of whether the decision made by NYCHA was arbitrary or capricious, by assessing if there existed

a rational basis for the determination. See, In the Matter of Pell v. Bd. of Educ., 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974) ("It is well settled that a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion."). This court cannot, "substitute its judgment for that of the agency. Even though the court might have decided differently were it in the agency's position, the court may not upset the agency's determination in the absence of a finding, not supported by this record, that the determination had no rational basis" (citations omitted). In the Matter of Mid-State Management Corp. v. New York City Conciliation and Appeals Bd., 112 A.D.2d 72, 75, 491 N.Y.S.2d 634 (1st Dept.1985); see also, In the Matter of Sullivan County Harness Racing Ass'n, Inc. v. Glasser, 30 N.Y.2d 269, 332 N.Y.S.2d 622, 283 N.E.2d 603 (1972).

Respondent, as a public housing authority, is subject to the rules of the United States Department of Housing and Urban Development. Under 24 CFR § 966.53(f)(2), a tenant is a person "who resides in the unit, and who is the remaining head of the household of the tenant family residing in the dwelling unit." Under respondent's regulations, a person may obtain remaining family member status if that person was a member of the original family or became one by birth or adoption; or, if that person received written permission from the project manager. That person also must have been in the apartment continuously and be otherwise eligible for public housing (see Chapter VII, Section IV, Subsection E of the Housing Authority's Management manual and its guidelines GM. 3692).

Respondent's requirement that an applicant receive permission to be added as a remaining family member is consistent with 24 CFR § 966.4(a)(v). This regulation states that, "The family must promptly inform the PHA [Public Housing Authority] of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit."

In November, 2002, respondent amended its guidelines to restrict the granting and permission, and potential succession rights, to certain close relatives including spouses, children, grandchildren and grandparents. The new regulation excluded other persons including aunts, uncles and cousins. Courts have consistently upheld the

written-consent requirement to obtain RFM status. See In the Matter of Edwards v. New York City Hous. Auth., 67 A.D.3d 441, 888 N.Y.S.2d 43 (1st Dept.2009) (upholding denial of remaining family member claim when petitioner failed to obtain written permission); In the Matter of Rivera v. New York City Hous. Auth., 60 A.D.3d 509, 876 N.Y.S.2d 3 (1st Dept.2009) ("Petitioner did not enter subject apartment lawfully, respondent never gave tenant of record written permission for petitioner to join household, and petitioner acknowledged that no such permission was ever obtained prior to tenant's death.").

In the instant action, Petitioner did not obtain written consent to permanently join the household and, therefore, failed to fulfill the lawful entry requirement to obtain remaining family member status. Consequently, petitioners' lack of remaining family member status precludes entitlement to succession rights. See In the Matter of McFarlane v. New York City Hous. Auth., 9 A.D.3d 289, 780 N.Y.S.2d 135 (1st Dept.2004) (denying claims to succession rights because petitioners failed to apply for and obtain remaining family member status).

NYCHA's denial of Petitioners' grievance was neither arbitrary nor capricious. It is clear that the Petitioner did not lawfully enter the household because she did not have written permission to join the household. Moreover, Petitioner does not fall into one of the categories of persons that are eligible to succeed to a lease as a remaining family member.

Accordingly it is ADJUDGED that the petition is denied and the proceeding dismissed.

Dated: 1/10/13

ENTER: *Donna Mills*
J.S.C.

DONNA M. MILLS, J.S.C.

FILED

JAN 14 2013

COUNTY CLERK'S OFFICE
NEW YORK