

Matter of Camacho v New York City Hous. Auth.

2013 NY Slip Op 30388(U)

February 19, 2013

Supreme Court, New York County

Docket Number: 402017/12

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
ILLANA CAMACHO,

INDEX NO. 402017/12

Petitioner,
-against-

MOTION DATE _____

NEW YORK CITY HOUSING AUTHORITY,

MOTION SEQ. NO. 001

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: 2/19/13

Donna M. Mills
DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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).

UNFILED JUDGMENT

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

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-----X
In the Matter of the Application of ILIANA
CAMACHO,

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

Index No. 402017/12

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
-----X

DONNA M. MILLS, J.:

In this special proceeding pursuant to C.P.L.R. Article 78, Petitioner Iliana Camacho ("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 her grandmother, the deceased tenant of record, Miriam Noel ("Ms. Noel").

Petitioner at the administrative hearing before an impartial Hearing Officer stated that she is twenty-nine years old and claimed to have moved into her grandmother's apartment when she was three years old. Petitioner also claimed to have continuously resided in the subject apartment since she was three years old. Petitioner testified that her grandmother died on May 22, 2009, at a hospital on Long Island. Before entering the hospital, Ms. Noel had been in a nursing home in Queens. Petitioner further testified that Ms. Noel left the apartment because she was sick and because the apartment building was being renovated.

Housing Assistant Nickcole Rivera ("Rivera") testified that Management first became aware the Petitioner resided in the apartment in April 2008, when Ms. Noel included the Petitioner's name on the Occupant's Affidavit of Income and submitted a Permanent Permission Request for the Petitioner to join the household. The family did not receive a response, but Petitioner testified that she became aware she was not added to the household when she received the tenant's Lease Addendum and Rent

Notice dated May 18, 2009, which reflected Ms. Noel as the sole occupant of the apartment. Petitioner admits Management never granted Ms. Noel's request for permission to add Petitioner to her household, however Petitioner challenges Management's denial of or alleged failure to act on Ms. Noel's permanent permission request.

In March 2010, management informed Petitioner she was occupying Ms. Noel's apartment without the benefit of a lease and may pursue a remaining-family-member grievance. Petitioner met with the Property Manager concerning her grievance on May 27, 2010. The Property Manager concluded Petitioner was not entitled to a lease because Ms. Noel never obtained management's written permission for Petitioner to reside in the apartment.

The Hearing Officer concluded that Petitioner established her residence in the subject apartment from approximately 1986 to the present, but Ms. Noel did not include the Petitioner on the Income Affidavits submitted to Management from 1991-2007 and 2009. The Hearing Officer did not sustain the grievance on the grounds that the Petitioner did not receive written approval from Management for the Petitioner to reside in the subject apartment and the tenant, Ms. Noel, was not residing in the subject apartment from April 2008, the time the request was submitted to Management, to June 2009 when Ms. Noel passed away.

The Hearing Officer based her determination on the following evidence: notarized letters from Petitioner, her neighbors, relative and doctor; the Permanent Permission Request form; NYCHA Resident Lease Agreement; Tenant Data Summary; Tenant Request for Transfer, Certificate of Death for tenant; Occupant's Affidavits of Income form 1991-209 and Interview Record entry dated April 22, 2008. Additionally, the Hearing Officer heard testimony from the Petitioner, her father, and Resident Services Associate Nickcole Rivera from the Housing Authority.

This court's role in an Article 78 motion is limited to the determination of whether the decision made by the Housing Authority 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

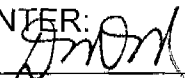
permission); In the Matter of Rivera v. New York City Hous. Auth., 60 A.D.3d 509, 876 N.Y.S.2d 3 (1st Dept.2009) ("Petitioner did not enter subject apartment lawfully, respondent never gave tenant of record written permission for petitioner to join household, and petitioner acknowledged that no such permission was ever obtained prior to tenant's death.").

In the instant action, irrespective of whether Petitioner resided in the subject apartment since she was three years old, 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, Petitioner's 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 Petitioner's 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.

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

Dated: 2/19/13

ENTER: 

J.S.C.

DONNA M. MILLS, J.S.C.

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