

Matter of Griffin v New York City Hous. Auth.

2013 NY Slip Op 30444(U)

January 15, 2013

Supreme Court, Queens County

Docket Number: 17320/08

Judge: Augustus C. Agate

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Short Form Order/Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IA PART 24

In the Matter of the Application of ANISAH x
GRIFFIN

-Petitioner-

For a Judgment under Article 78 of the
civil Practice Law and Rules

-against-

NEW YORK CITY HOUSING AUTHORITY,

-Respondent-

Index

Number 17320/08

Motion Date: September 11, 2012

Motion Seq. No. 2

x

The following papers numbered 1 to 11 read on this motion by petitioner Anisah Griffin for an order restoring the matter to motion calendar, and for a judgment vacating the determination of respondent New York City Housing Authority (Housing Authority) dated March 26, 2008 which approved the hearing officer's determination of March 12, 2008, dismissing petitioner's claim for succession rights to an apartment as a remaining family member

	Papers <u>Numbered</u>
Order to Show Cause -Affirmation-Affidavit-Exhibits	1-4
Other Affirmation -Exhibit.....	5-6
Verified Answer -Exhibits.....	7-9
Reply Affirmation.....	10-11
Memorandum of Law.....	

Upon the foregoing papers the motion and petition are determined as follows:

Petitioner Anisah Griffin timely commenced this Article 78 proceeding on July 11, 2008. The parties, pursuant to a series of stipulations extended the Housing Authority's time in which to appear or answer until December 23, 2008. The parties thereafter stipulated to adjourn the return date of the petition until February 3, 2009, and petitioner's time to serve its reply was extended until

January 23, 2009. The parties also stipulated that the proceeding in the Civil Court, Queens County entitled *New York City Housing Authority-Ravenswood Houses v Anisah Griffin*, Index No. 16472/2008, “shall be” marked off the calendar until the Article 78 proceeding “is submitted for a decision” and further consented “that at that juncture, the parties shall restore the Civil Court Proceeding to the calendar via a stipulation”.

The within Article 78 proceeding was marked fully submitted on February 3, 2009. This court, in an order dated March 31, 2009, denied petitioner’s application without prejudice to renew, on the grounds that the moving papers had failed to include proof of service of the notice of petition.

In May 2012, the Housing Authority commenced a holdover proceeding in the Civil Court, Queens County, entitled *New York City Housing Authority-Ravenswood Houses v Anisah Griffin*, Index No. 1123/2012. Petitioner Anisha Griffin, in an order to show cause dated June 27, 2012, now seeks to restore the within Article 78 proceeding to the calendar, and to stay the holdover proceeding pending the hearing of this motion. The court granted a temporary restraining order with respect to the holdover proceeding in the order to show cause. The parties, pursuant to a stipulation dated July 19, 2012, agreed that, subject to the court’s approval, the Article 78 proceeding would be restored to the court’s calendar, the return date was adjourned until September 11, 2012, and respondent Housing Authority would serve its verified answer and an updated memorandum of law, and petitioner would serve any reply by August 31, 2012. Petitioner’s present motion and petition were fully submitted on September 11, 2012.

In view of the fact that the parties seek to have the petition determined on the merits, and respondent does not claim to have been prejudiced by petitioner’s delay, petitioner’s request to restore, or re-notice, her Article 78 proceeding, is granted.

Louise Pitts was the tenant of record of apartment 6C located at 35-37 12 Street, Long Island City, New York. The subject apartment is located in a Housing Authority project known as the Ravenswood Houses. Anisah Griffin is the granddaughter of Louise Pitts. Andrea Griffin, Anisah’s mother, is the daughter of Louise Pitts. Louise Pitts died on October 12, 2004, in a nursing home in Virginia. Anisah Griffin and her mother resided with Louise Pitts, beginning in 1981, when Anisah was five years old. Her grandmother became Anisah’s guardian, and at some point Andrea no longer resided in the subject apartment. Anisah was raised by her grandmother, and lived with her in the subject apartment throughout her childhood. Anisah attended university in North Carolina between 1994 and 1998, and upon her return to New York resided with her grandmother until 2001 when she moved to her own apartment in Manhattan. Sometime in 2003, Anisah moved in with her grandmother, who suffered from dementia, in order to care for her. Andrea Griffin was also

an occupant of the subject apartment during 2003 and 2004. Some months prior to her death Lousie Pitts resided in a nursing home in Virginia, and Andrea Griffin also resided in Virginia. Anisah Griffin, however, continued to occupy the subject apartment.

In 2005 Andrea Griffin provided the Housing Authority with a death certificate for her mother Louise Pitts. The Housing Authority sent Anisah Griffen a ten day notice to quit on January 19, 2006 and thereafter commenced a proceeding in the Civil Court, Queens County, Housing Court Part entitled *New York City Housing Authority (Ravenswood Houses), v Anisah Griffin and John Doe, 35-37 12th Street #6C*, Index No. 11657/2006.

Following a meeting with Isaac Perry, the housing manager, Anisah Griffin filed a grievance with the Housing Authority requesting that she be granted remaining family member status. Mr. Perry denied Anisah's request on April 12, 2006, without stating his reasons for the denial.

On June 12, 2006, the Housing Authority and Anisah Griffin, entered into a so-ordered stipulation in the Civil Court proceeding. Pursuant to said stipulation Anisah Griffin consented to the entry of a final judgment of possession in favor of the Housing Authority, with the warrant of eviction to be stayed subject to the terms of the stipulation. Ms. Griffith agreed to vacate the subject apartment on or before December 12, 2006; to pay the sum of \$511.00 a month and to pay back use and occupancy of \$1,044.72. It was agreed that if Ms. Griffin did not vacate on the agreed date, or failed to make an installment of use and occupancy, the stay would be vacated and the warrant of eviction would execute without any further notice other than the service of the notice of eviction by the marshal. Ms. Griffin explicitly reserved the right to bring an Article 78 proceeding in an appropriate forum.

In July 2006, Anisah Griffin filed an appeal from the project manager's determination of April 12, 2006, which included an appeal by her mother Andrea Griffin. This remaining family member grievance was denied by Mr. Perry on January 24, 2007. On April 11, 2007, Anisah Griffin and her counsel attended a Borough Grievance review, at which time Regina Chu, Housing Manager of the Queens Management Department, determined that Anisah was not eligible for remaining family member status. The Borough Director/Borough Manager, in a notice dated April 11, 2007, stated that he agreed with the disposition of the manager and informed Ms. Griffin of her right to appeal to a hearing officer.

In August 2007, the Housing Authority commenced a holdover proceeding in Civil Court against Anisah Griffin and Andrea Griffin, under Index No. 16427/2007. Said proceeding was adjourned several times pending the outcome of a grievance hearing, and thereafter adjourned so that petitioner could file an Article 78 proceeding.

A grievance hearing scheduled for January 18, 2008 was adjourned to February 1, 2008, at which time Anisah Griffin appeared with her attorney. A representative of the Housing Authority was also present at the hearing. At the hearing, Ms. Griffin presented a letter executed on January 10, 2003, and requested that it be admitted into evidence. Said letter reads as follows:

“To who it May Concern:

This is to inform New York City Housing Authority (Ravenswood Housing) that my daughter Andrea Griffin is staying with me in my apartment at 35-37 12th Street 6C Long Island City, New York 11106. She has permission from me to stay in our home. Anisah Griffin and Andrea Griffen are taking care of me. Anisah Griffin is my Granddaughter who has lived with me most of her life. If you need more information please call me at [number intentionally deleted] . Andrea Griffin is also my power of attorney”.

Said letter is notarized and executed by Louise Pitts and Andrea Griffin. Anisah Griffin testified that said letter was given to the management office; that her grandmother was suffering from dementia at the time said letter was written; that her mother had a power of attorney; and that her grandmother signed said letter. Ms. Griffin also testified that towards the final two months or so of her life, her grandmother was in a nursing home in Virginia , and that her mother had also moved to Virginia.

The Hearing Officer, in his decision of March 12, 2008, denied petitioner’s grievance, and stated as follows:

“Petitioners Andrea Griffin and Anisah Griffin grieve that they have wrongfully been denied a lease as remaining family members in the household of Andrea Griffin’s late mother, tenant of record Louise Pitts. Grievant Anisah Griffin’s counselor represents only her. No appearance is made by or for Andrea Griffin and her grievance is dismissed.”

“ Hearing Offer Exhibit 1 in evidence is the project grievance summary, dated January 24, 2007.”

“Anisah Griffin, 31, testified that she moved into the subject premises with her mother and grandmother in 1981 when she was five years old. Her mother Andrea Griffin has been a life-long drug addict and Anisah was the ward of her grandmother. From 1994 to 1998 Ms. Griffin attended university in North Carolina. She acknowledges that when she returned to New York City she had her own apartment in Harlem. Beginning in 2001 Grievant was employed by

the New York City Human Resources Administration. About that time, her grandmother was diagnosed with Alzheimer's disease. And in 2003, Ms. Griffin returned to her childhood home at the Ravenswood Houses to care for Tenant Louise Pitts. The tenant died on October 12, 2004. The witness explains that neither her mother nor her grandmother was well enough to seek formal permission for Petitioner's return to the household. The management office was first advised of Anisah Griffin's presence when she presented her grandmother's death certificate. At that time she was informed that it could be accepted only from the late tenant's daughter, then a listed household member. Ms. Griffin was told that her mother subsequently went to the office and soon after Grievant was advised that she was but a squatter and had to leave. In 2005, the matter was heard in Housing Court at which time the case was remanded to the Housing Authority to give her the opportunity to exhaust administrative remedies. In September 2006, Ms. Griffin met with Housing Manager Isaac Perry who said her mother would have to pursue forms with which to pursue any claim to a lease. The witness insists that the management office lost the tenant folder and subsequently her mother left the household diminishing any claim that the tenant's granddaughter would have to a lease. When Andrea Griffin was in the household she could document no income and could perforce, not have been eligible for public housing."

"Under cross questioning, the witness acknowledged that Louise Pitts spent her final months in a nursing home."

"In sum, Petitioner has given evidence that she was a member of the original family composition and is the granddaughter of the late tenant. Absent, however, any showing that her return to the apartment was authorized or even that the project manager knew of her presence, there is no case of residual tenancy".

The Housing Authority approved the Hearing Officer's decision and disposition on March 26, 2008.

Petitioner timely commenced the within Article 78 proceeding and seeks a judgment vacating and annulling the Housing Authority's determination and directing that she be granted remaining family member status and that the Housing Authority issue a new lease in her name . Petitioner asserts in the petition and supporting affidavit that she lived in the subject apartment with her grandmother from 1981 to 2001. She acknowledges that the Housing Authority informed her that her grandmother did not list her as an occupant of the subject apartment, although her mother was listed as an occupant of the subject apartment

in 2003 and 2004. She states that she lived in the subject apartment with her grandmother, who was her guardian, for most of her life and that her grandmother towards the end of her life was not well enough to seek formal permission to add her as a family member and occupant of the subject apartment. She asserts that documentary evidence of her place of residence has either been lost, misplaced, or not even considered by the Housing Authority, and that the Housing Authority's failure to grant her remaining family member status, and its failure to consider any mitigating circumstances, constitutes an abuse of discretion.

Respondent Housing Authority asserts, in opposition, that its determination is neither arbitrary nor capricious, nor an abuse of discretion, and is supported by substantial evidence in the law and the record. Respondent asserts that petitioner did not qualify as a remaining family member as Louise Pitts never obtained written permission to add Anisah as a member of the household and never listed her as a person living in the subject apartment on the Housing Authority's "Occupant's Affidavit of Income". Respondent asserts that the "Occupant's Affidavit of Income" forms dated June 18, 2003, and April 16, 2004 listed Andrea Griffin as unemployed occupant of the household, and Bernadette Owens as a paid caretaker of Mrs. Pitts, and described Mrs. Pitts as a person using a wheelchair, with a mental or psychological disability of dementia.

Respondent asserts that there is no implicit approval exception to the requirement of written consent to occupy the tenant's apartment, and that there is no evidence that the Housing Authority knew of, and somehow, implicitly approved of petitioner's presence in the apartment. Respondent further asserts that petitioner's alleged mitigating circumstances do not justify granting her a lease as a remaining family member. Finally, respondent asserts that petitioner's payment of rent does not confer tenancy rights.

Petitioner's counsel, in his reply, asserts that petitioner contends that her grandmother, during her lifetime, requested permission to add her to the household; that petitioner resided with her grandmother in 2003, and quite possibly could have been in the apartment for a year or more, from August 2003 to August 2004 prior to her grandmother moving to a nursing home; and that respondent should consider both her mitigating circumstances and as a matter of equity, the totality of the circumstances, in that she cared for her grandmother during her illness, and has continued to reside in the apartment and pay all of the household bills and has no other place to live, if evicted. Petitioner also complains about the manner in which her mother's efforts to pursue a lease for petitioner as a remaining family member was handled by respondent.

It is well settled that the court's power to review an administrative action is limited to whether the determination was warranted in the record, has a reasonable basis in law and is neither arbitrary nor capricious nor an abuse of discretion (*see Matter of Jennings v Commissioner, N.Y.S. Dept. of Social Servs.*, 71 AD3d 98 [2010]; *McLeon v NYCHA Hope*

Gardens, 48 AD3d 686 [2008]). The court finds that the Housing Authority’s determination is neither arbitrary nor capricious and has a reasonable basis in the law and the record, and was not an abuse of discretion.

The Housing Authority’s guidelines permit a qualified “remaining family member” of a tenant of record’s household to succeed to a tenant's apartment, after the tenant of record either moves or dies, provided the person meets the following criteria: The Housing Authority’s own regulation defines a “remaining family member” as:

“occupants of all projects who were a member(s) of the original tenant family, or became a permanent member(s) of the tenant family subsequent to move-in with the written approval of the project management, or subsequent to move-in, were born or legally adopted into the tenant family and thereafter, remained in continuous occupancy up to and including the time the tenant of record moves or dies. Any occupant who meets the standards defined above shall be deemed a ‘remaining family member.’ ‘Remaining family members’ shall be offered an Authority lease if they are otherwise eligible for public housing in accordance with the admission standards for applicants contained in the Housing Application Manual” (*see* New York City Housing Authority Management Manual – Chapter IV – Occupancy, Subdivision IV – Changes in Family Composition).

Petitioner was unable to establish at the grievance hearing that she had obtained the project management’s written approval to become a permanent member of the tenant household, one year prior to her grandmother’s death, which is a necessary condition to the recognition of the petitioner as a remaining family member. Rather, the evidence presented at the hearing establishes that although petitioner resided in the subject apartment with her grandmother, who was her guardian, from 1981 to 2001, she had moved out of the apartment by 2001, and did not return until some unspecified date in 2003. Petitioner presented no evidence of when, in 2003, she moved into the subject apartment with her grandmother. Petitioner, thus, did not demonstrate that she was continuously living in the subject apartment with written permission from management for at least one year before her grandmother’s death. The court will not engage in speculation as to whether petitioner resided in the subject apartment with her grandmother for a year prior to the tenant’s death.

Although petitioner’s mother Andrea Griffin was listed as an occupant on the tenant’s annual income reports in 2003 and 2004, Anisah Griffin was not listed in these reports. Andrea Griffin did not pursue her grievance at the hearing and her claim was dismissed. Petitioner may not assert any claims in this proceeding on behalf of her mother, as she did not appear as her representative at the hearing. Furthermore, at the hearing, petitioner acknowledged that her mother resided in Virginia, and had stopped working. Therefore, as

Andrea Griffin was no longer an occupant of the apartment, and had not documented her income, petitioner could not claim remaining family member status based upon her mother's occupancy of subject apartment.

The court notes that although petitioner's original affidavit refers to additional documents not presented at the hearing, these exhibits were not included in the moving papers. To the extent that petitioner seeks to rely upon the January 10, 2003 letter presented at the hearing, said letter only sought permission to have Andrea Griffin occupy the apartment and did not specify where petitioner was living at the time. This letter, therefore, was insufficient to establish that Anisah Griffin was residing in the subject apartment with Mrs. Pitts in January 2003.

Furthermore, petitioner was not relieved of the obligation of obtaining written permission even if respondent was aware of her occupancy, yet failed to act (*see Schorr v New York City Dept. of Hous. Preserv. & Dev.*, 10 NY3d 776, 779 [2008]; *Edwards v New York City Hous. Auth.*, 10 NY3d 776[2009]; *McLeon*, 48 AD3d at 686 [Supreme Court should have dismissed the petition when: (1) evidence was adduced at the administrative hearing that petitioner failed to obtain the project management's written permission to reside in the apartment while the tenant was still alive; and (2) there was no indication that the Housing Authority was "actually aware" of petitioner's residency thereat]).

Although the court recognizes the hardship to petitioner, and that, if evicted, she will have to find alternative housing, the hearing officer was not required to consider such hardships and mitigating factors, in determining petitioner's remaining family member grievance (*see Matter of Fermin v New York City Hous. Auth.*, 67 AD3d 433 [2009]). Under the circumstances, petitioner's timely payment of rent is irrelevant (*see Matter of Martin v New York City Hous. Auth.*, 93 AD3d 606 [2012]; *Matter of Weisman v New York City Hous. Auth.*, 91 AD3d 543, 544 [2012], leave to appeal denied 19 NY3d 921 [2012]), and her arguments pertaining to her loss of her grandmother and her dealings with the Housing Authority do not constitute a basis for annulling respondent's determination (*see Matter of Martin v New York City Housing Auth.*, *supra*; *Matter of Guzman v New York City Hous. Auth.*, 85 AD3d 514 [2011]; *Matter of Fermin v New York City Hous. Auth.*, 67 AD3d 433, 433, 889 NYS2d 137 [2009]).

The court finds that the Housing Authority's determination that petitioner does not qualify as a remaining family member, is neither arbitrary nor capricious nor an abuse of discretion (*see Matter of Martin v New York City Housing Authority*, *supra*; *Matter of Guzman v New York City Hous. Auth.*, *supra*; *Matter of Fermin v New York City Hous. Auth.*, *supra*; *Matter of Aponte v New York City Hous. Auth.*, 48 AD3d 229 [2008]; *Matter of Jamison v New York City Hous. Auth.*, 25 AD3d 501 [2006]; *Matter of Hutcherson v New York City Hous. Auth.*, 19 AD3d 246 [2005]; *Matter of Abdil v Martinez*, 307 AD2d 238, 242 [2003]).

Accordingly, in view of the foregoing, is it hereby
ORDERED and ADJUDGED that petitioner's request to vacate the Housing
Authority's determination of March 26, 2008 is denied, and the petition is hereby dismissed.

Dated: January 15, 2013

HON. AUGUSTUS C. AGATE, J.S.C.