

Matter of DeJesus v New York City Hous. Auth.

2013 NY Slip Op 31536(U)

July 12, 2013

Sup Ct, New York County

Docket Number: 400618/2013

Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 15

In the Matter of the Application of
AIDA DEJESUS,

Petitioner,

- v -

NEW YORK CITY HOUSING AUTHORITY, MILL
BROOK HOUSES,

Respondents.

FILED
JUL 16 2013
INDEX NO. 400618/2013
MOTION DATE _____
MOTION SEQ. NO. 1
MOTION CAL. NO. _____
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to _____ were read on this motion for/to

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answer – Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	1
Answer – Affidavits – Exhibits _____	2, 3
Replying Affidavits _____	

Cross-Motion: Yes **X** No

Aida DeJesus (“Petitioner”), *pro se*, brings this Article 78 proceeding to reverse the New York City Housing Authority’s (“NYCHA”) determination denying Petitioner’s remaining-family-member grievance and terminating Petitioner’s tenancy. NYCHA seeks to dismiss the claim.

Petitioner claims entitlement to the lease at 503 East 137th Street, #07C, New York, New York, in the Mill Brook Housing Development, as a remaining family member. Her sister-in-law Deanna DeJesus and her brother William DeJesus, were the former tenant and co-tenant of the apartment, both of whom vacated the apartment in 2011.

In December 2008, Petitioner's brother, and then-current tenant of the premises, requested management's permission for Petitioner and her son to temporarily reside at the apartment. This request was approved, but, as per policy and as expressed in the approval sheet signed by both parties, such permission expired six months later on June 22, 2008. The request form, signed by Petitioner, provided that she "will have no right of possession of the" apartment if the tenant of record vacated.

In March 2011, NYCHA was notified that the tenants of record had vacated the apartment and moved to Florida in January 2011. Petitioner then commenced this action to succeed her brother's lease as a remaining family member.

On May 27, 2011, Petitioner met with Property Manager Gwendolyn Junious in an attempt to join the lease as a remaining family member. Ms. Junious states that she "advised Aida Dejesus she had no wrights [sic] to the apartment because request was not made properly through management. I advised Ms. DeJesus she had to move out."

On July 26, 2011, the Borough Manager Victor Hernandez upheld the disposition of Ms. Junious, finding that Petitioner was ineligible to enter into a lease with NYCHA for the subject apartment on the grounds that: "1. If Aida Dejesus was living in the apartment, it was without the written permission of the NYC Housing Authority" and "2. NYC Housing Authority procedure GM- 3692 states that the tenant of record must have obtained permission from management in writing to allow the remaining family member to reside in the household one year before he/she died or vacated the apartment."

Petitioner requested a grievance hearing with NYCHA for a review of her grievance. A hearing was held on February 13, 2013. On February 21, 2013, Hearing Officer Miller-Beauvil ("HO Miller-Beauvil") found that Petitioner "failed to establish that she, with the written permission of Management, resided in the subject apartment for at least one year prior to the tenants of record vacating the apartment in 2011." Specifically, HO Miller-Beauvil stated:

Grievant testified that she moved into the subject apartment in November or December 2008. The Temporary Permission Request dated December 22, 2008 reveals that her addition to the household

on a temporary basis was approved by Management with an effective date of December 28, 2008. The approval was for a stay of six months. In June 2009, Management's permission for Grievant's temporary residency expired and Grievant was no longer authorized by Management to reside in the apartment. There was no evidence that tenant or co-tenant requested by Permanent Permission Request, that Grievant be added to their household on a permanent basis.

In rendering this decision, Grievant's documentary evidence was considered in rebuttal, but did not establish that Grievant obtained Management's written permission to join tenants' household on a permanent basis. Grievant is not a remaining family member according to NYCHA regulations.

Petitioners now submits this CPLR Article 78 Petition, seeking to reverse NYCHA's determination denying her remaining family member status.

NYCHA provides a multi-step grievance procedure to determine if an occupant qualifies as a remaining family member. NYCHA Management Manual, XII "Remaining Family Members (Succession Rights)", Section C "Grievance Procedures", provides:

The Development Manager shall advise an RFM claimant of his/her right to initiate a grievance proceeding as specified in the Grievance Procedure (see Section XII, D, below). The RFM Grievance is commenced with the development housing manager followed by a Management Department review. Some RFM claimants may also be eligible to a grievance hearing before an Impartial Hearing Officer.

Section (C)(3), "exclusion from a hearing" provides that a "temporary resident", defined as a "family member with temporary residency permission only" is "not... entitled to a grievance hearing before an Impartial Hearing Officer." Here, Petitioner, who was listed as a temporary resident, was provided with a hearing, even though she was not entitled to one pursuant to NYCHA's Management Manual.

Generally speaking, the Supreme Court is the proper venue for commencing CPLR Article 78 proceedings to challenge an administrative determination (*see CPLR §7801; Matter of Peckham v. Calogero*, 12 NY3d 424 [2009]), but if such a determination is made after a mandatory evidentiary hearing is held, the standard of judicial review is substantial evidence; (*see, CPLR §7803[4]; Siegel, NY Prac 1010 [5th Ed]*). In the instant action, the evidentiary hearing held before NYCHA was not mandatory because the District Office had “discretion” to schedule a hearing. Thus, the case is properly before this court.

NYCHA allows a “remaining family member” to take over the former tenant’s lease. An occupant who wishes to succeed the lease of a tenant of record as a remaining family member must establish, among other things, that he or she:

- (a) moved into the apartment lawfully (i.e., was listed on the housing application and authorized to reside in the apartment at initial move-in; was born into/adopted into/became a ward of the authorized family; or permanently moved in with management’s written permission);
- (b) remained in the apartment continuously after lawful entry;
- (c) remained in the apartment for not less than one year after the date of lawful entry and prior to the date the tenant of record vacates the apartment or dies (the “one-year requirement”); and
- (d) is otherwise eligible for public housing in accordance with the admissions standard for applicants.

Individuals who have received management’s permission to temporarily reside in a tenant’s apartment do not qualify as remaining family members under this policy. To establish continuous occupancy and compliance with the one-year requirement, the occupant must “be named on all affidavits of income from the time [s]he lawfully enters the apartment until all tenants/lessees move out of the apartment or die.”

It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.”

(*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 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 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Here, NYCHA's decision finding that Petitioner failed to establish remaining family member status based on its regulations was supported by a rational basis. Petitioner never obtained, nor does she allege to have ever had, written permission of management to reside permanently in the apartment. Accordingly, she cannot qualify as a remaining family member.

Wherefore, it is hereby,

ORDERED that this Petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: July 12, 2013



HON. EILEEN A. RAKOWER

Check one: **FINAL DISPOSITION** X **NON-FINAL DISPOSITION**
Check if appropriate: **DO NOT POST** **REFERENCE**

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