

Ricks v New York City Hous. Auth.
2013 NY Slip Op 31680(U)
July 17, 2013
Supreme Court, New York County
Docket Number: 103619/12
Judge: Tanya R. Kennedy
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. TANYA R. KENNEDY
Justice

PART 25

Index Number : 103619/2012
RICKS, BARRON
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

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

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the accompanying decision.*

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: July 17, 2013

Hon Tanya R Kennedy, J.S.C.
TANYA R. KENNEDY

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 NEW YORK — NEW YORK COUNTY

PRESENT: TANYA R. KENNEDY
Justice

PART 25

In the Matter of the Application of
BARRON RICKS,

~~UNFILED~~ **JUDGMENT**

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NEW YORK CITY HOUSING AUTHORITY,
Respondent.

INDEX NO. 103619/12

MOTION DATE 6-12-13

MOTION SEQ. NO. 001

MOTION CAL. NO. 1

The following papers, numbered 1 to _____ were read on this petition to/for Art. 78

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

Answering Affidavits — Exhibits _____ cross motion _____

Replying Affidavits _____

PAPERS NUMBERED	
_____	<u>1</u>
_____	<u>2</u>
_____	<u>3</u>

Cross-Motion: Yes X No

Petitioner, who is self-represented, commenced this Article 78 proceeding to challenge respondent's determination denying his remaining-family-member grievance. For the reasons set forth below, the petition is denied and the proceeding is dismissed.

Petitioner's mother was the tenant of record at the New York City Housing Authority (NYCHA) Polo Grounds Tower Houses, 2979 Eighth Avenue, Apartment 20F, New York, New York 10039. Petitioner was born into the household and resided there until 2006 when he moved to another residence in New Rochelle, New York.

Although petitioner maintains that he returned to his mother's apartment in late 2007 due to her declining health and continued to reside there following her death in July 2009, he was not identified as an occupant on his mother's annual affidavits of income and family composition from 2007 through 2009. Rather, petitioner was identified an emergency contact on his mother's 2007 and 2008 income affidavits, which listed the New Rochelle, New York address. Sometime in 2009, petitioner's mother met with the Polo Grounds Housing Assistant and Assistant Manager, Eugenia Mickens, and obtained a Permanent Permission Request form for petitioner to re-join the household. However, petitioner's mother never signed and returned the form to management prior to her death.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Respondent notified petitioner in June 2010 that he was occupying his mother's apartment without a lease and that he may pursue a remaining-family-member grievance. Petitioner initiated a remaining-family-member grievance, which the Property Manager denied on April 6, 2011 because management did not receive a request or grant permission for petitioner to re-join the household. On June 1, 2011, petitioner met with the Borough Manager who, on June 9, 2011, upheld the Property Manager's decision, finding that the tenant of record did not request and that management did not grant him permanent permission to re-join the household; that petitioner's criminal background rendered him ineligible to reside in public housing; and that use and occupancy was not current.

Thereafter, an administrative hearing was held before Hearing Officer Ester Tominic-Hines on October 20, 2011, February 15, 2012 and March 28, 2012, in which petitioner, the Polo Grounds Housing Assistant and Assistant Manger, Eugenia Mickens, and the Resident Services Associate, Dianne Munroe, testified and submitted documentary evidence. On April 27, 2012, the Hearing Officer issued a decision denying the grievance, finding that petitioner was not a remaining-family-member as defined by NYCHA guidelines and that he had not resided in the apartment with management permission for one year prior to his mother's death as required by NYCHA guidelines. Respondent issued its final determination on May 30, 2012 approving the Hearing Officer's decision denying petitioner's grievance.

Petitioner maintains in his petition that he and his mother repeatedly requested that management add him to the lease when his returned to the apartment in 2007 and that management was aware of his mother's declining health and his presence there. Petitioner also maintains that he obtained a Permanent Permission Request form from a housing assistant in late 2009 which he timely completed and returned. He further maintains that respondent assured him that he would be returned to the lease and that the denial of his grievance was arbitrary and capricious. However, petitioner admitted before this Court during oral argument that while he did not obtain permission to re-join the household, that he nonetheless should remain in the apartment since he resided there since birth and that respondent was aware of his return to the residence to care for his ailing mother.

The purpose of an Article 78 proceeding is the judicial review of an administrative agency's decision, limited to whether the decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (CPLR 7803 [3]). An administrative decision will withstand judicial scrutiny if it has a rational basis and is not arbitrary and capricious (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

A remaining-family-member is defined as (1) an original family member; or (2) a person born to, legally adopted by or judicially declared to be the ward of the tenant of record or of an authorized permanent family member; or (3) a person who obtained written permission for permanent occupancy from the Housing Manager prior to November 24, 2002; and who continuously resides in the household up until the time that tenant of record vacates the apartment or dies (*see Management Manual, Section IV - Remaining Family Member [Succession Rights], A – Existing Families, as amended by GM-3692, annexed to Answer as Exhibit B*).

Since petitioner was an authorized occupant who moved out of the residence, he was required to obtain written permission from the Housing Manager for permanent occupancy to re-join the household and to continuously reside there for one year immediately prior to the date that his mother either vacated the apartment or died (*see Management Manual, Section IV - Remaining Family Member [Succession Rights], B - Additional Persons ["One Year Rule"]*, as amended by GM -3692, annexed to Answer as Exhibit B). Despite petitioner's allegations that he repeatedly sought permission to re-join the household upon his return in 2007, he failed to establish that he obtained such permission and continuously resided at the premises for one year immediately prior to his mother's death.

Due to petitioner's failure to establish his entitlement to obtain remaining-family-member status and his acknowledged failure to obtain written consent to re-join the household, the denial of his remaining-family-member grievance was neither arbitrary nor capricious (*see Matter of Adler v New York City Hous. Auth.*, 95 AD3d 694 [1st Dept 2012]; *Matter of Weisman v New*

York City Hous. Auth., 91 AD3d 543 [1st Dept 2012]; *Matter of Ruiz v New York City Hous. Auth.*, 81 AD3d 465 [1st Dept 2011]). Even if respondent was aware of petitioner's occupancy, respondent was not estopped from denying petitioner remaining-family-member status (*see Matter of Adler v New York City Hous. Auth.*, *supra* at 695).

Therefore, it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed. This constitutes the Decision, Order and Judgment of the Court.

Dated: July 17, 2013

Tanya R. Kennedy
J.S.C.
TANYA R. KENNEDY
J.S.C.

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

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