

Matter of Brown v New York City Hous. Auth.

2013 NY Slip Op 31988(U)

August 20, 2013

Sup Ct, New York County

Docket Number: 400406/13

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 : 400406/2013
BROWN, ISAIAH
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. 400406/2013
MOTION DATE _____
MOTION SEQ. NO. 001

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: August 20 2013

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

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
ISAIAH BROWN,

Petitioner,

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room

400406/13

DATE 7-23-13

MOTION SEQ. NO. 001

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

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

1

2

3

Cross-Motion: Yes No

Petitioner, who is self-represented, commenced this Article 78 proceeding to reverse the November 8, 2012 determination of respondent, New York City Housing Authority (NYCHA), which dismissed his remaining-family-member grievance. Respondent cross-moves to dismiss the petition. For the reasons set forth below, the cross-motion is granted, the petition is denied and the proceeding is dismissed.

Petitioner's mother, Hazel Brown, was the tenant of record at the Amsterdam Houses, 249 West 62nd Street, apartment 2E. Petitioner was a member of his mother's household and subsequently vacated the apartment on October 28, 2006. Petitioner alleges that he returned to the apartment in 2009 and acknowledges that his mother did not obtain written permission for him to re-join the household. From 2006 until 2009, petitioner was not listed on Ms. Brown's affidavits of income as an occupant of the household.

After Ms. Brown's death on August 4, 2010, her daughter, Elizabeth Brown, requested and was granted a remaining-family-member grievance. Elizabeth Brown eventually settled the grievance on August 25, 2011 by signing a stipulation where she agreed to vacate the apartment by December 31, 2011. Once Elizabeth Brown failed to vacate the apartment by the agreed upon date, respondent commenced a holdover proceeding against her, "Jane Doe" and "John Doe."

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

Petitioner appeared in Housing Court in response to the holdover proceeding on August 14, 2012 and signed a stipulation where he agreed, among other things, to be substituted for “John Doe” and that respondent’s records set forth outstanding use and occupancy arrears totaling \$4,962.88. Respondent informed petitioner on September 27, 2012 that he was occupying his mother’s apartment without a lease and that he may pursue a remaining-family-member grievance. Petitioner requested a remaining-family-member grievance and on October 17, 2012, he met with the Project Manager who denied the grievance because petitioner’s mother never requested and received management’s written permission for petitioner to re-join the household.

Petitioner then met with the Borough Director who issued a decision, dated November 8, 2012 decision, dismissing the remaining-family-member grievance since petitioner did not receive written permission from management to reside in the apartment at the time of his mother’s death and owed \$4,995.08 in use and occupancy arrears.

Petitioner argues in support of his petition that respondent failed to provide him with a full and fair opportunity to challenge the Project Manager’s adverse determination when he appeared before the Borough Director because he did not receive a copy of the Project Manager’s decision. He also maintains that respondent was aware of his residency at the apartment.

In support of its cross-motion to dismiss, respondent maintains that petitioner acknowledges that he was not current with his use and occupancy payments, which is a prerequisite to pursuing a remaining-family-member grievance. Respondent also argues, among other things, that a hearing would be futile even if petitioner was current with use and occupancy payments since petitioner concedes that his mother did not request or obtain management’s written permission to re-join the household.

When reviewing an administrative determination in an Article 78 proceeding, the Court is limited to considering whether the determination “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]).

Petitioner acknowledges that he was not current in his use and occupancy payments. Therefore, he was not entitled to a remaining-family-member grievance hearing because current use and occupancy payments is a prerequisite to pursuing such grievance (*see Matter of Hawthorne v New York City Hous. Auth.*, 81 AD 3d 420, 420-421 [1st Dept 2011]; *Matter of Crippen v New York City Hous. Auth.*, Sup Ct, NY County, October 4, 2011, Mendez, J., index No. 401030/11, at *3).

Petitioner also acknowledges that his mother never requested and received written permission for him to re-join her household. Therefore, respondent properly dismissed petitioner's grievance since petitioner did not obtain the required permission to live in his mother's apartment (*see Matter of Collazo v New York City Hous. Auth.*, 93 AD3d 475 [1st Dept 2012]; *Matter of Johnson v New York City Hous. Auth.*, 50 AD3d 438 [1st Dept 2008]).

Contrary to petitioner's contentions, he was not entitled to receive a written copy of the Project Manager's decision denying his remaining-family-member grievance. Respondent's Management Manual provides that where the Project Manager determines that the claimant does not qualify for remaining-family-member status, the Manager shall forward his/her written conclusions to the Management Department for automatic review and "shall not notify the claimant of the adverse decision" (*see Exhibit B, NYCHA Management Manual, Chapter IV, XII [D] [3] [b][2]*). The Project Manager forwarded to the Borough Director his denial of petitioner's grievance for automatic review in accordance with the respondent's rules. Once the Borough Director determined that petitioner failed to establish his entitlement to remaining-family-member status, petitioner's claim was properly dismissed and there was no further right of appeal to the Hearing Officer (*see Exhibit B, NYCHA Management Manual, Chapter IV, XII [D] [4][b][3]*). The Court need not address the parties' remaining arguments since the dismissal of petitioner's remaining-family-member grievance was neither arbitrary nor capricious.

Therefore, it is

ORDERED and ADJUDGED that the cross-motion is granted, the petition is denied and the proceeding is dismissed, without costs or disbursements to respondent.

This constitutes the Decision, Order and Judgment of the Court.

Dated: August 20, 2013

Ann Nancy Kennedy
J.S.C.
TANYA R. KENNEDY
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

UNFILED JUDGMENT

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