

Matter of Silberman v New York City Hous. Auth.

2013 NY Slip Op 32248(U)

September 20, 2013

Sup Ct, New York County

Docket Number: 100852/2013

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. EILEEN A. RAKOWER

Index Number : 100852/2013
SILBERMAN, SHLOME
vs
NYC HOUSING AUTHORITY
Sequence Number : 001
ARTICLE 78

PART 15

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 1

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1

Answering Affidavits — Exhibits _____ No(s). 2, 3

Replying Affidavits _____ No(s). 3, 4

Upon the foregoing papers, it is ordered that this motion is **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).

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

Dated: 9/20/13


_____, J.S.C.
HON. EILEEN A. RAKOWER

- 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: Hon. EILEEN A. RAKOWER PART 15

Justice

IN THE MATTER OF THE APPLICATION OF
SHLOME SILBERMAN,

Petitioner,

INDEX NO. 100852/2013

- v -

MOTION DATE _____

NEW YORK CITY HOUSING AUTHORITY,

MOTION SEQ. NO. 1

Respondents.

MOTION CAL. NO. _____

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

UNFILED JUDGMENT

Notice of Motion/ Order to Show Cause and notice of affidavits - Exhibits	_____	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).	_____
Answer — Affidavits — Exhibits	_____		2
Replying Affidavits	_____		3, 4

Cross-Motion: **X** Yes No

Shlome Silberman (“Petitioner”) brings this CPLR Article 78 proceeding to annul and vacate the New York City Housing Authority’s (“NYCHA”) determination to deny his remaining-family-member grievance. NYCHA cross-moves to dismiss the petition for failure to state a cause of action.

Petitioner claims entitlement to the lease at 626 Wythe Place, Apartment 4N, Brooklyn, New York, an apartment in the Taylor-Wythe Housing Development. Bernard Adler (“Adler”) is the former tenant of record at apartment 4N.

Petitioner asserts that he moved in with Adler in 2009, yet does not specify what month, and resided with him until he vacated the apartment on January 7, 2010. Petitioner admits that Adler never requested permission to add Petitioner to his household and that he is not related to Adler, but states that their relationship was “like family”. Adler vacated the apartment on January 7, 2010.

On January 7, 2010, Petitioner and his wife Chaya Silberman (“Chaya”) were

issued a notice from the management office stating “[y]ou are occupying the above-named apartment without benefit of a lease and consequently may be subject to eviction by the Authority to a licensee.” Petitioner was given the opportunity to file for a grievance proceeding on the issue of “whether he may be entitled to keep the apartment and be offered a lease.”

Pursuant to a letter dated March 4, 2010, Petitioner was advised that the termination of his lease is being considered because of “[b]reach of rules and regulations Non verifiable income Failure to submit Affidavit of Income and supporting documentation.” Petitioner was offered the opportunity to discuss this matter with the Housing Manager on March 17, 2010, however, Petitioner did not appear at this meeting.

The Project Grievance Summary dated April 8, 2010, and the District Grievance Summary dated May 3, 2010, issued to Petitioner, provide that he and his wife were not authorized as a member of tenant’s household as the tenant did not request permission for his occupancy.

On March 28, 2012, August 8, 2012 and November 27, 2012, a hearing regarding Petitioner and his wife’s remaining-family-member status was held before Chief Hearing Officer Ester Tomicic-Hines (“HO Tomicic-Hines”). On January 14, 2013, HO Tomicic-Hines, issued a decision denying the Grievance. She states in her decision:

The testimony and evidence presented in this matter establish the grievants were not authorized members of the tenant’s household and did not receive written permission from Management to reside in the subject apartment.

The grievants are not remaining family members as defined by NYCHA regulations. Tenants who wish to have additional persons, including former household members join the household on a permanent basis, must submit a request to Management and receive written approval for the additional occupant; and the occupant must reside in the subject apartment for at least one year after receiving the written permission and prior to the tenant’s death or otherwise vacating the apartment.

On February 13, 2013, NYCHA affirmed HO Tomicic-Hines' decision, denying Petitioner a lease.

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

NYCHA's Management Manual, chapter IV, Sub. IV, F.4, pp. 7-10, sets forth the requirements for obtaining permanent permission for an additional person to join a tenant's household.

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.

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. At the time that Adler vacated the apartment, Petitioner did not have management's written permission as an authorized occupant of the apartment, nor does he demonstrate that he had been living continuously in the apartment for at least one year prior to Adler's vacating the apartment. Petitioner's assertion that he should be granted remaining-family-member status because NYCHA allegedly knew about and implicitly approved his occupancy is hereby rejected, as there is no estoppel against a government agency. (*See, Advanced Refractory Techs v. Power Auth. Of NY*, 81 NY2d 670 [1993]). Furthermore, Petitioner admits that he is not related to Adler, thereby rendering him ineligible for written permission or succession rights. Accordingly, he cannot qualify as a remaining-family-member.

Wherefore, it is hereby,

ORDERED and ADJUDGED 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: ²⁰ September 12, 2013


HON. EILEEN A. RAKOWER

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

UNFILED JUDGMENT

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