

Matter of Alonzo v New York City Hous. Auth.

2013 NY Slip Op 32411(U)

October 7, 2013

Supreme Court, New York County

Docket Number: 402639/12

Judge: Doris Ling-Cohan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

In the Matter of the Application of
PAULA ALONZO,

Petitioner,

INDEX NO. 402639/12

MOTION SEQ. NO. 001

For a judgment pursuant to Article 78 of the CPLR

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

FILED

OCT 09 2013

COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1-3 were considered on this Article 78:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits _____	_____ <u>1, 2</u> _____
Answering Affidavits — Exhibits _____	_____ <u>3</u> _____
Replying Affidavits _____	_____ _____
Cross-Motion: [] Yes [X] No	_____

Upon the foregoing papers, it is ordered that this Article 78 proceeding is decided as indicated below.

Petitioner Paula Alonzo seeks an order pursuant to Article 78 of the CPLR reversing respondent New York City Housing Authority's (NYCHA) determination, dated September 10, 2012, which denied petitioner's remaining family member grievance.

BACKGROUND

Petitioner currently resides at 125 West 228th Street, Apt. 1L, Bronx, New York (Subject Apartment). The Subject Apartment is located at Marble Hill Houses, a public housing development owned and operated by NYCHA. The United States Department of Housing and Urban Development mandated NYCHA to promulgate policies to govern admittance of persons to public housing. See 24

C.F.R. § 960.202(a).

On August 9, 2010, the tenant of the Subject Apartment, and petitioner's mother, Melba Cruz (tenant Cruz), passed away. Three days prior to tenant Cruz's death, petitioner sought permission, at the management office, to reside in the Subject Apartment. In November 2010, petitioner met with the project manager with regards to a remaining family member grievance, which was denied in a Project Grievance Summary dated that same day. In a letter to petitioner, dated November 16, 2010, NYCHA informed petitioner that NYCHA would review her claim and render a decision. Such letter also stated that petitioner could submit additional documentation to support her grievance. Thereafter, the Borough Manager met with petitioner, reviewed her grievance, and ultimately upheld the property manager's decision in the District Grievance Summary, dated January 31, 2011. A grievance hearing was subsequently scheduled and held on several days. Following the hearing, the hearing officer issued a decision (Final Determination), dated September 10, 2012, denying petitioner's remaining family member grievance.

Thereafter, petitioner commenced this Article 78 proceeding to reverse the Final Determination.

DISCUSSION

Here, the Final Determination was not arbitrary or capricious, and, thus, the petition must be denied. In deciding whether an agency's determination was arbitrary, capricious or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found. *See Heintz v Brown*, 80 NY2d 998, 1001 (1992); *Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 277-278 (1972). Judicial review of an administrative determination is limited to 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..." CPLR §7803 (3). The Court of Appeals explained the "arbitrary and

capricious” standard in *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 (1974) as follows:

“The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ (1 N.Y. Jur., Administrative Law, § 184, p. 609). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.”

Thus, a court may not substitute its judgment for that of an administrative agency, if there is a rational basis for the agency’s determination. See *Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 (2001). The court may not overturn the determination of an administrative agency merely because it would have reached a contrary result. See *Matter of Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 278 (1972); *Matter of Kaplan v Bratton*, 249 AD2d 199, 201 (1st Dep’t 1998).

Pursuant to the NYCHA’s Management Manual, an occupant may succeed to the lease of a tenant of record, as a remaining family member, if certain conditions are established:

“A. Conditions to Acquire Remaining Family Member Status

A person who claims to have Remaining Family Member [(RMF)] Status...shall acquire RFM status if (s)he lawfully enters the apartment **and** is in continuous occupancy of the apartment, as follows:

1. Lawful Entry

An RFM claimant enters the apartment lawfully if (s)he became part of the household as one of the following:

- a. Original Tenant Family member (according to Section XI. A.); or ...
- c. Obtained Permanent Residency Permission (i.e., written permission) from the Housing Manager (according to Section XI. B. 2); **and**

2. Continuous Occupancy

The RFM claimant must remain in continuous occupancy in the apartment, i.e., 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.”

Verified Answer, Exh. A, NYCHA Management Manual, Chapter IV, Occupancy, Sect. XII. A. Further, 24 C.F.R. § 966.4(a)(1)(v) states that tenants must “request [NYCHA] approval to add any other family member as an occupant of the unit”.

Petitioner argues that she has resided in the Subject Apartment since 2004, at the request of tenant Cruz. Petitioner states that she was living with tenant Cruz to take care of her, as she was sick

and required a liver transplant. In the Final Determination, the hearing officer agreed with the decision of the property manager, and found that, although tenant Cruz sought to add her daughter to the household in January 2005, and received a permission form from the management office, such form was never returned to NYCHA. The Final Determination states that tenant Cruz's "Affidavits of Income submitted to NYCHA between 2005 and 2010...[do] not list [petitioner] as a person living in the [Subject A]apartment. ...On the Affidavits dated January 4, 2010 and January 21, 2009, tenant [Cruz] provides a specific other address for [petitioner] and lists [petitioner] as her emergency contact." Verified Petition, Exh. A, Final Determination, p. 4. As such, the Final Determination found that petitioner "did not establish that she had written permission from NYCHA to join tenant [Cruz's] household or that she resided in the apartment with management's written permission for at least one year prior to tenant [Cruz's] passing." *Id.* In support, NYCHA proffers, *inter alia*, the Resident Lease Agreement, the Occupant's Affidavit of Income for 2005 through 2009, and the Family Composition. The Affidavit of Income list tenant Cruz as the head of household, and shows that tenant Cruz's grandson, Jonathan L. Martinez, was previously a resident but has moved out of the Subject Apartment. See Verified Answer, Exh. C, D, E, and G.

It is uncontested that petitioner is the daughter of tenant Cruz, and that she was not on the household composition or income affidavits for the years she claims to have lived in the Subject Apartment. Rather, petitioner argues that the Final Determination should be reversed as tenant Cruz was "paranoid of losing her benefits", and that petitioner will be homeless. Verified Petition, p. 1. However, the plain language of the policies promulgated by NYCHA, and 24 C.F.R. § 966.4(a)(1)(v), specifically states that, to qualify for succession: (1) a family member of the tenant must have lawfully entered the apartment, requiring written permission from NYCHA, which petitioner here, undisputedly failed to obtain; and (2) must have continuously occupied such apartment, requiring petitioner to be listed on the

income affidavits or family compositions, on which petitioner undisputedly failed to be listed.

Notwithstanding petitioner's arguments, as indicated, tenant Cruz affirmatively submitted documents to NYCHA for the relevant years which do not list petitioner as a member of the household. Petitioner provides no persuasive arguments or any evidence to support the within petition. Thus, the Final Determination, finding that petitioner is not entitled to succession rights, as she does not meet the minimum requirements to succeed, is rational, and not arbitrary and capricious. Thus, this court is constrained to deny the petition.

Accordingly, it is

ORDERED that the petition is denied and this proceeding dismissed; and it is further

ORDERED that within 30 days of entry of this order respondent NYCHA shall serve a copy upon petitioner with notice of entry.

This constitutes the decision of this Court.

Dated: 10/7/13



DORIS LING-COHAN, J.S.C.

Check one: FINAL DISPOSITION
Check if Appropriate: DO NOT POST

NON-FINAL DISPOSITION

J:\Article 78\Alonzo v NYCHA - succession rights.wpd

FILED

OCT 09 2013

COUNTY CLERK'S OFFICE
NEW YORK