

**Matter of Toussaint v New York City Hous. Auth.**

2014 NY Slip Op 30034(U)

January 6, 2014

Supreme Court, New York County

Docket Number: 400011/13

Judge: Doris Ling-Cohan

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**SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY**  
**PRESENT: Hon. Doris Ling-Cohan, Justice** **Part 36**

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**In the Matter of the Application of**  
**JOSEPH M. TOUSSAINT,**

**Petitioner,**

**INDEX NO. 400011/13**

**MOTION SEQ. NO. 001**

**For a judgment pursuant to Article 78 of the CPLR**

**-against-**

**FILED**

**NEW YORK CITY HOUSING AUTHORITY,**

**JAN 07 2014**

**Respondent.**

**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 Joseph M. Toussaint seeks an order pursuant to Article 78 of the CPLR reversing respondent New York City Housing Authority's (NYCHA) determination, dated August 15, 2012, which denied petitioner's remaining family member grievance.

**BACKGROUND**

Petitioner currently resides at 713 East 108<sup>th</sup> Street, Apt. 1B, Brooklyn, New York (Subject Apartment). The Subject Apartment is located at Bruekelen 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).

In December 2010, petitioner's sister, Carmen Toussaint (Tenant), the tenant of the Subject Apartment, passed away. In February 2011, petitioner informed NYCHA of Tenant's death, and expressed his desire to remain in the Subject Apartment. Subsequently, petitioner met with the manager, who thereafter determined, by Grievance Summary dated September 9, 2011, that petitioner does not qualify as a remaining family member. In a letter to petitioner, dated September 15, 2011, the District Office informed petitioner that his claim would be reviewed, and that he could submit additional information, or request a personal interview. The Borough Manager upheld the manager's decision, and informed petitioner that he could seek a formal hearing.

Thereafter, petitioner requested a hearing. After several adjournments, the hearing proceeded on August 10, 2012. By decision dated August 15, 2012, the hearing officer denied petitioner's remaining family member grievance and found that petitioner did not qualify as a remaining family member. By Determination of Status, dated September 19, 2012 (Final Determination), NYCHA approved the hearing officer's decision. On January 4, 2013, petitioner commenced this Article 78 proceeding to reverse the Final Determination.

#### DISCUSSION

Here, as detailed below, 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 (1<sup>st</sup> Dep’t 1998).

Moreover, it is well settled “that the interpretation given a statute by the agency charged with its enforcement will be respected by the courts if not irrational or unreasonable.” *Matter of Fineway Supermarkets, Inc. v State Liq. Auth.*, 48 NY2d 464, 468 (1979); *Matter of Howard v Wyman*, 28 NY2d 434, 438 (1971); *Matter of Lower Manhattan Loft Tenants v New York City Loft Bd.*, 104 AD2d 223, 224 (1<sup>st</sup> Dep’t 1984), *aff’d* 66 NY2d 298 (1985).

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 [(RFM)] 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 he has been living in the Subject Apartment since 2005 at the request of Tenant, as Tenant’s health, and subsequently petitioner’s health, was failing. Petitioner contends that he submitted proof that Tenant is his sister. Petitioner also argues that he has regularly paid the rent since Tenant passed away. In the Final Determination, the hearing officer found that tenant is not a remaining family member as he never received written permission to reside in the Subject Apartment. Verified Answer, Exh. U, hearing decision, p. 3. The Final Determination states that “Tenant did not request nor receive written permanent permission of the Housing Authority for [petitioner] to reside in the subject apartment.” *Id.* In further support, NYCHA proffers, *inter alia*, the Lease Agreement, and the affidavits of income from 2005, 2006, 2007, 2008, 2009, and 2010, all of which list Tenant as the sole occupant of the Subject Apartment. *See* Verified Answer, Exh. C and D, NYCHA Resident Lease Agreement and Occupant’s Affidavits of Income.

It is uncontested that petitioner is the brother of Tenant, that he was not on the household composition for the six years he claims to have lived in the Subject Apartment prior to Tenant’s death, and that petitioner was receiving unreported income during such years. Rather, petitioner argues that the Final Determination should be reversed, as he does not know why Tenant did not add him on the lease, that NYCHA overlooked his familial relationship with Tenant, and his occupancy in the Subject Apartment. However, the plain language of the policies promulgated by NYCHA, and 24 C.F.R. § 966.4(a)(1)(v), specifically states that, in order 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 affirmatively submitted documents to NYCHA for the relevant years listing only herself as the sole occupant. There is no claim that Tenant was prevented from requesting permission by her illness. 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 he 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 all parties with notice of entry.

This constitutes the decision of this Court.

Dated: 1/6/14

  
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 DORIS LING-COHAN, J.S.C.

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

NON-FINAL DISPOSITION

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