

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

2014 NY Slip Op 30368(U)

February 7, 2014

Supreme Court, New York County

Docket Number: 401796/13

Judge: Jr., Alexander W. Hunter

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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**

Index Number : 401796/2013  
JONES, LASHAINA  
vs  
NYC HOUSING AUTHORITY  
Sequence Number : 001  
ARTICLE 78

PART 33  
INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 32, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1-5  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 6-32  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the  
Decision and Judgment annexed hereto.*

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

**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).

Dated: 2/7/14

AWH  
**ALEXANDER W. HUNTER, JR.**, 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  
COUNTY OF NEW YORK: PART 33**

-----X  
In the Matter of the Application of  
Lashaina Jones and David Velez,

Index No.: 401796/13

Petitioners,

Decision and Judgment

-against-

New York City Housing Authority,

Respondent.

**UNFILED JUDGMENT**  
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-----X  
**HON. ALEXANDER W. HUNTER, JR.**

The application of pro se petitioners for an order pursuant to CPLR Article 78, annulling the determination of respondent New York City Housing Authority (the "Housing Authority") denying petitioners succession rights as remaining family members to the public housing apartment formerly leased to their deceased grandmother, is denied and the proceeding is dismissed without costs and disbursements.

Pro se petitioners Lashaina Jones (Lashaina") and David Velez ("Velez"), who are siblings, seek to succeed as remaining family members to a lease to the public housing apartment previously leased to their deceased great-grandmother Hallie Jones ("Hallie"). Hallie was the tenant of record of apartment 2F at 1390 5th Avenue in the King Towers development in Manhattan (the "subject apartment"). On the last affidavit Hallie submitted to the Housing Authority before her death, she listed herself as the sole occupant of the subject apartment. On February 12, 2012, Hallie died.

On April 9, 2012, Lashaina informed the property manager that she had been residing in the subject apartment since September 2010. David also claimed to have resided in the subject apartment since 2008. David produced a family court order dated June 24, 2008, which indicated that he would live with Hallie in the subject apartment.

The property manager concluded that petitioners do not qualify as remaining family members because Hallie never obtained written permission for them to permanently reside in the apartment. In July 2012, the borough manager upheld the decision denying their remaining family member grievance.

A formal hearing was conducted before an impartial hearing officer on May 17, 2013. After hearing from all parties, witnesses, and reviewing the documentary evidence, the hearing officer issued a decision dated May 21, 2013. The hearing officer denied the grievance of petitioners and determined that they did not qualify as remaining family members. The hearing

officer determined that Hallie did not list either petitioner as residing in the subject apartment nor did she seek permission to permanently add either petitioner to the family composition.

By Determination of Status dated June 19, 2013, the Housing Authority adopted the decision of the hearing officer.

Petitioners aver that they are entitled to succession rights because they were misled to believe that they were going to be added to the lease when the Housing Authority adjusted the rate of use and occupancy after Hallie died. Petitioners maintain that if they are removed from the subject apartment, they will become homeless.

Respondent opposes the instant proceeding on the ground that its determination denying remaining family member status is in accord with its policies and applicable law. Respondent avers that: (1) petitioners were unauthorized occupants in the subject apartment; (2) the payment of use and occupancy by petitioners does not confer succession rights to petitioners; (3) petitioners may not obtain remaining family member status by estoppel or relying on mitigating circumstances; and (4) judicial review is limited to the record adduced before the hearing officer.

In reviewing the instant Article 78 proceeding, this court may not disturb an administrative decision unless the action of the agency was arbitrary and capricious, was in violation of lawful procedures, or was made in excess of its jurisdiction. **Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974)**. It is well settled that this court “may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion (citations omitted).” **Id. at 232**. Moreover, the determination of an administrative agency, “acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency’s determination is supported by the record.” **Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v. State of New York Div. of Hous. & Cmty. Renewal, 46 A.D.3d 425 (1st Dept. 2007), *affd* 11 N.Y.3d 859 (2008)**.

Pursuant to regulations promulgated by the Department of Housing and Urban Development (“HUD”), respondent must certify annually that it has admitted persons to public housing in accordance with HUD regulations. **See 42 U.S.C. §1437 et seq.; 24 C.F.R. §960.201**. HUD mandates that respondent promulgate and adhere to certain tenant selection guidelines. **See 24 C.F.R. §960.202 and §960.203**. Throughout the tenancy, a tenant must (1) request approval from the Housing Authority to add any other family member as an occupant of the unit; and (2) supply any information requested by the Housing Authority or HUD pertaining to family income and composition in accordance with HUD requirements. **See 24 C.F.R. §966.4(a)(1)(v); §960.259(a)(2)**. Annually, the Housing Authority must reexamine family income and composition and make necessary adjustments. **See 24 C.F.R. §960.257(a)**.

The Housing Authority provides for exceptions to its tenant-selection procedures, including allowing a non-tenant to become a permanent member of a Housing Authority household. To permanently add a non-tenant to the household, a tenant in current occupancy must first request and obtain the written consent of the property manager (the "written permission requirement.") The Appellate Division, First Department has repeatedly enforced the written permission requirement of the Housing Authority. **See Matter of Rahjou v. Rhea, 101 A.D.3d 422 (1st Dept. 2012); Matter of Adler v. New York City Hous. Auth., 95 A.D.3d 694 (1st Dept. 2012); Matter of Weisman v. New York City Hous. Auth., 91 A.D.3d 543 (1st Dept. 2012).**

It is undisputed that Hallie failed to obtain written permission for petitioners to permanently reside in the subject apartment before she died. Thus, this court finds that the determination of the Housing Authority had a rational basis and is sustained on review.

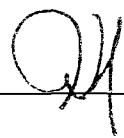
Although the denial of remaining family member status may present a hardship for petitioners, mitigating factors do not provide a basis for annulling the determination of the Housing Authority. **See Matter of Firpi v. New York City Hous. Auth., 107 A.D.3d 523 (1st Dept. 2013).** The fact that the Housing Authority accepted use and occupancy from petitioners after Hallie died, does not confer remaining family member status upon petitioners and estoppel may not be invoked. **See Adler, 95 A.D.3d at 695.**

Accordingly, it is hereby,

ADJUDGED that the application of pro se petitioners for an order pursuant to CPLR Article 78, annulling the determination of the Housing Authority denying petitioners succession rights as remaining family members to the public housing apartment formerly leased to their deceased grandmother, is denied and the proceeding is dismissed without costs and disbursements.

Dated: February 7, 2014

ENTER:

  
\_\_\_\_\_  
J.S.C.

**ALEXANDER W. HUNTER, JR.**

**UNFILED JUDGMENT**

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