

Walker v New York City Hous. Auth.

2014 NY Slip Op 30802(U)

March 19, 2014

Sup Ct, New York County

Docket Number: 401806/13

Judge: Andrea Masley

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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

PRESENT: Andrea Masley
Justice

PART 25

WALKER, LEONARD

INDEX NO. 401806/13

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

N.Y.C. HOUSING AUTHORITY

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ~~is granted~~ is denied and
denied for the reasons stated in the
attached decision.

FILED

APR 01 2014

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: 3/20/14

Andrea Masley
HON. ANDREA MASLEY J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

DECISION/ORDER

LEONARD WALKER,
Petitioner,

HON. ANDREA MASLEY
Judge, Supreme Court

-against-

NEW YORK CITY HOUSING AUTHORITY, ST.
NICHOLAS HOUSES,

FILED

Respondent. APR 01 2014

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

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<u>Papers</u>	<u>Numbered</u>
Order to Show Cause, TRO, Exhibits	1
Verified Answer	2
Respondent's Memo of Law	3

Pursuant to CPLR Article 78, petitioner Leonard Walker seeks to annul the June 6, 2013 determination of a hearing officer denying him succession rights to the apartment of his late mother, Deloris Allen, a tenant at respondent New York City Housing Authority St. Nicholas Houses in New York, NY until her death on July 1, 2011.

After a hearing on February 26 and May 21, 2013, Hearing Officer Joan Pannell concluded that Mr. Walker was not a remaining family member under NYCHA's regulations and thus was not entitled to remain in the apartment. The findings and conclusions were approved by NYCHA, and having exhausted his administrative remedies, Mr. Walker brought this proceeding.

Mr. Walker argues that because he was part of the original household composition and was living with and caring for his mother over the course of her long illness, his residence in his mother's apartment was, as he puts it, "within the required timeframe." Mr. Walker disputes the testimony of NYCHA's witnesses at the hearing and submits documentation to support his claim, some of it introduced here for the first

time.

In a proceeding under CPLR 7803, the only questions that may be raised, as relevant here, are 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,” pursuant to 7803(3); or, pursuant to 7803(4), whether a determination “made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.” The standard of substantial evidence “demands only that a given inference is reasonable and plausible, not necessarily the most probable.” *Ridge Road Fire Dist. v Schiano*, 16 NY 3d 494, 499 (2011), internal citations omitted. The quantum of proof is less than a preponderance of the evidence. *Id.* Furthermore, the court may not substitute its judgment for that of the administrative agency if the agency decision has a rational basis on the record. *Royal Realty Co. v New York State Division of Housing and Community Renewal*, 161 AD2d 404, 405 (1st Dept 1990). For example, credibility of witnesses is resolved by the hearing officer. *Walker v Franco*, 275 AD2d 627 (1st Dept 2000).

Pursuant to its written policy in the NYCHA Management Manual Chapter 1 and consistent with federal law, NYCHA permits certain non-tenants to join the household of a tenant already in residence, subject to NYCHA's written consent. Written consent is required of anyone wishing to become a permanent resident subject to certain exceptions, such as one who moved into the apartment with the original tenant family and never left, or one who was born or adopted into the household or became a ward of the family. To be deemed a remaining family member, an occupant must show that they moved in to the apartment pursuant to NYCHA policy, that they remained

continuously and for not less than a year prior to the death of the tenant or the date the tenant vacated, and that they are otherwise eligible for public housing.

The conclusion of the Hearing Officer is based on evidence adduced over two days of trial, including documentation that Ms. Allen was the sole authorized occupant of the apartment at the time of her death; annual affidavits of income and housing composition from, signed by Ms. Allen, listing herself as the sole occupant of the apartment; and a request for temporary permission for Mr. Leonard to stay in the apartment, bearing the signature of Ms. Allen but dated September 11, 2011, over two months after she died. The Hearing Officer also heard testimony from a NYCHA employee who swore that Mr. Leonard made no other request to stay in the apartment. Mr. Walker presented testimony from a former NYCHA manager who had no memory of Ms. Allen ever requesting permission for her son to become a resident family member, though NYCHA had, she recalled, initiated termination proceedings over the years arising from alleged non-verification of income. A family friend testified to Mr. Leonard's care for his mother over more than a year. Mr. Leonard testified that he was the only family member available to tend to his mother as her condition became grave.

In short, the facts adduced at the hearing establish that Ms. Allen was the sole tenant of record at Apartment 11C, 230 West 129th Street in the Saint Nicholas Houses of NYCHA, in Manhattan. At the time of her death, she was the only authorized tenant.

On affidavits of family income submitted in 2007, 2010, and 2011, Ms. Allen stated that she was the only person living in her apartment.

Mr. Leonard argues that he is entitled to resident family member status because he was a long-term tenant over the course of his mother's illness. It is not in dispute that Mr. Leonard cared for his mother at home through the time of her death and that

she was sick for over a year. However, this does not entitle Mr. Leonard to succeed to the tenancy. Even if NYCHA had been aware that Mr. Leonard was living in his mother's apartment, the agency is not estopped from denying him status as a remaining family member. *Adler v New York City Hous. Auth.*, 95 AD3D 694 (1st Dept 2012), *lv dismissed* 20 NY3d 1053 (2013).

The court's review is limited in scope and it may not consider documents introduced by Mr. Walker for the first time with this motion. Judicial review is confined to the "facts and record adduced before the agency." *Featherstone v Franco*, 95 NY 2d 550, 554 (2000). Nor may the court consider the credibility of witnesses who testified at the hearing. *Walker v Franco, supra*.

The determination that Mr. Leonard is not entitled to succession rights as a remaining family member is supported by substantial evidence that Mr. Leonard's occupancy was not pursuant to the written permission of NYCHA, as required by its rules. Judicial review is limited to a determination of whether the administrative action complained of is arbitrary and capricious or lacks a rational basis. *Pell v Board of Education*, 34 NY2d 222, 230-31 (1974).

There is thus no reason to disturb the determination of the Hearing Officer that Ms. Allen never obtained written permission for Mr. Leonard to be added to the household, and contrary to Mr. Leonard's contention, he is not entitled to remain in the apartment on grounds that NYCHA was purportedly aware of his long-term occupancy.

FILED

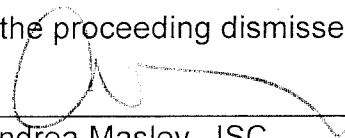
APR 01 2014

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Accordingly, it is

ORDERED that the petition is denied and the proceeding dismissed.

Dated: 3/19/14


Andrea Masley, JSC