

Matter of Garrett v New York City Hous. Auth.

2014 NY Slip Op 30894(U)

March 26, 2014

Supreme Court, New York County

Docket Number: 101136/2013

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 : 101136/2013

GARRETT, STEVEN

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

PART 33

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 37, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-9

Answering Affidavits — Exhibits _____ | No(s). 10-36

Replying Affidavits _____ | No(s). 37

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: 3/20/14

J.S.C.

ALEXANDER W. HUNTER JR.

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

2]
**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X
In the Matter of the Application of
Steven Garrett,

Index No.: 101136/2013

Petitioner,

Decision and Judgment

-against-

New York City Housing Authority,

UNFILED JUDGMENT

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Respondent.

-----X
HON. ALEXANDER W. HUNTER, JR.

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

Pro se petitioner Steven Garrett seeks to succeed as a remaining family member to a lease for the public housing apartment previously leased to his deceased mother Mary Garrett ("Mary"). Mary was the tenant of record of apartment 6H at 530 Olmstead Avenue, Bronx, New York (the "subject apartment"), in the Castle Hill Houses development. On the 2006 affidavit of income and family composition that Mary submitted to respondent, she did not list petitioner as an occupant. On the 2007, 2008, 2009, 2010, and 2011 affidavits of income and family composition, she listed herself as the sole occupant of the subject apartment. On October 15, 2011, Mary died.

Petitioner asserts that he resided with Mary for five years prior to her death to care for her due to her deteriorating health. In February 2012, management informed petitioner that he was occupying the subject apartment without the benefit of a lease. Thereafter, petitioner submitted a remaining family member grievance. The grievance was denied as Mary failed to request permission for petitioner to reside in the subject apartment. Petitioner appealed to the borough management office, which upheld the decision of the property manager. By a notice of counterclaims, affirmative defenses and/or defenses, respondent further notified petitioner that he was otherwise ineligible to reside in public housing due to his unfavorable criminal history.

An administrative hearing was conducted on March 13, 2013. After hearing from all of the parties and reviewing all of the evidence, the hearing officer denied the grievance, as Mary did not receive written permission for petitioner to reside in the subject apartment. The hearing officer did not address the subject of the unfavorable criminal history of petitioner. On April 17, 2013, respondent adopted the decision of the hearing officer denying the remaining family

member grievance (the "final determination").

Petitioner avers that: (1) Mary was bedridden and could not make the request to add petitioner as a member of the subject apartment; (2) the final determination ignored overwhelming and irrefutable evidence supporting his remaining family member claim; (3) respondent created a binding contract with petitioner by continuing to accept use and occupancy payments; and (4) the termination of his occupancy will result in him becoming homeless.

Respondent avers that the final determination is rational because: (1) petitioner had never been an authorized occupant of the subject apartment; (2) Mary failed to request permission for petitioner to occupy the subject apartment; (3) Mary concealed the occupancy of petitioner by failing to list him as an occupant on the affidavits of income and family composition that she submitted prior to her death; and (4) petitioner admitted that he did not have permission to reside in the apartment. Respondent further avers that transfer of the instant proceeding to the Appellate Division, First Department would be inappropriate, as petitioner has not raised an issue of substantial evidence and he admitted that Mary did not receive permission for him to occupy the subject apartment.

In reply, petitioner avers that the duration of his occupancy entitles him to remain in the subject apartment as a squatter.

Here, transfer to the Appellate Division, First Department is not appropriate, as the material facts adduced at the administrative hearing are not in dispute. See CPLR 7804(g); Rosenkrantz v. McMickens, 131 A.D.2d 389, 389 (1st Dept. 1987). The standard of judicial review is whether the administrative agency determination was arbitrary and capricious. Id. A decision issued by an administrative agency will withstand judicial scrutiny if it has a rational basis. Pell v. Board of Education, 34 N.Y.2d 222, 231 (1974). "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Howard v. Wyman, 28 N.Y.2d 434, 438 (1971).

The Housing Authority must certify annually to the United States Department of Housing and Urban Development ("HUD") 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 has mandated that the Housing Authority promulgate and adhere to certain tenant selection guidelines. See 24 C.F.R. §§ 960.202 and 960.203. HUD regulations further mandate the Housing Authority to regularly monitor family composition and income after it has admitted a family into public housing. See 24 C.F.R. § 960.257. Throughout the tenancy, a tenant must request approval to add additional occupants to the household. See 24 C.F.R. § 966.4.

The regulations of the Housing Authority require a tenant of record to obtain written permission to add additional occupants to the household. A tenant who wishes to add an additional occupant to the household must submit a written request to the development manager and receive written approval for the additional occupant to reside in the apartment. To succeed

as a remaining family member, the occupant must reside in the apartment for at least one year after receiving written permission and prior to the death or departure of the tenant of record. To establish compliance with the one-year requirement, the occupant must be named on all affidavits of income from the time he or she first entered the household. The Appellate Division, First Department has repeatedly enforced the written-consent policy of the Housing Authority. **See Rahjou v. Rhea, 101 A.D.3d 422 (1st Dept. 2012); Rosello v. Rhea, 89 A.D.3d 466 (1st Dept. 2011); Filonuk v. Rhea, 84 A.D.3d 502 (1st Dept. 2011).**

The final determination of respondent had a rational basis in the record. The record supports the finding that petitioner was not an authorized occupant of the subject apartment. During her 30-year tenancy, Mary never sought permission for petitioner to become an authorized occupant. In fact, Mary specifically represented that petitioner would not reside with her in the subject apartment. Moreover, the last five affidavits that she submitted before her death reflected that she was the sole occupant of the subject apartment. The court further notes that petitioner concedes that he did not have permission to reside in the subject apartment. Thus, the court must deny the application of petitioner and sustain the final determination of respondent.

Although the denial of remaining family member status may present a hardship for petitioner, mitigating factors do not provide a basis for annulling the final determination. **Firpi v. New York City Hous. Auth., 107 A.D.3d 523, 524 (1st Dept. 2013).** The fact that petitioner resided in the subject apartment for five years prior to the death of his mother, does not confer remaining family member status, as there is no evidence that the Housing Authority knew or implicitly approved of his occupancy in the subject apartment. **Filonuk at 503.** Nor does the payment of use and occupancy by petitioner confer succession rights. **Perez v. New York City Hous. Auth., 99 A.D.3d 624 (1st Dept. 2012).**

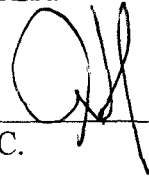
The court has considered the remaining arguments of petitioner and finds that they are without merit.

Accordingly, it is hereby

ADJUDGED that the application by pro se petitioner for an order pursuant to CPLR Article 78, annulling the determination of respondent New York City Housing Authority denying petitioner succession rights as a remaining family member to the public housing apartment formerly leased to his deceased mother, is denied and the proceeding is dismissed without costs and disbursements.

Dated: March 26, 2014

ENTER:



J.S.C.

ALEXANDER W. HUNTER JR.

UNFILED JUDGMENT

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