

Diaz v New York City Hous. Auth.

2014 NY Slip Op 31073(U)

April 17, 2014

Sup Ct, New York County

Docket Number: 100038/14

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

Meloon Diaz

INDEX NO. 100038/14

-v-

MOTION DATE _____

NYC Housing Auth

MOTION SEQ. NO. 001

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

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

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion~~ ^{petition} be ~~denied~~ ^{granted} for the reasons stated in the ~~affidavit~~ ^{affidavits} of April 17, 2014.

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COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 4/29/14

[Signature], 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:

DECISION/ORDER

NELSON DIAZ,
Petitioner,

HON. ANDREA MASLEY
Judge, Supreme Court

-against-

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

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

| <u>Papers</u> | <u>Numbered</u> |
|--------------------------|-----------------|
| Verified Petition | 1 |
| Verified Answer | 2 |
| Respondent's Memo of Law | 3 |

This is an Article 78 proceeding brought to challenge NYCHA's decision denying petitioner Nelson Diaz's request to succeed his mother who resided in a NYCHA apartment at 711 FDR Dr. in New York City, until her death on April 13, 2012.

In 2011, Mr. Diaz moved in with his mother, when she was diagnosed with cancer and underwent chemotherapy treatment. Mr. Diaz and his mother did not abide by the NYCHA lease agreement, which requires NYCHA tenants to request permission from the Housing Manager to add a member to the household.

In February 2012, Mr. Diaz and his mother requested permission from the Housing Manager to add Mr. Diaz to the household and the request was granted in March 2012. In May 2012, Mr. Diaz notified management that his mother had passed away and that he wanted to remain in the apartment. He was told to formally commence a remaining-family-grievance. However, management concluded that Mr. Diaz did not meet the "one-year requirement," which provides that a person seeking to take over the lease must have lawfully occupied the apartment continuously for one year. Because Mr. Diaz's occupancy was authorized for less than one month prior to

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his mother's death, his grievance was denied.

Upon denying Mr. Diaz's grievance in May 2012, NYCHA's District Office informed Mr. Diaz that his claim could be reviewed upon submission of additional documentation or upon requesting a personal interview. Mr. Diaz met with the Borough Manager in June 2012, but the Borough Manager agreed with management. Mr. Diaz then submitted a request seeking a formal hearing before an impartial Hearing Officer. Mr. Diaz was represented by counsel at the hearing. After reviewing evidence and hearing witness testimony from both parties, the Hearing Officer denied Mr. Diaz's grievance because Mr. Diaz offered no contemporaneous evidence to show that he resided in the apartment for at least a year prior to his mother's death and because his occupancy in the apartment was authorized for less than one month prior to his mother's death.

Mr. Diaz claims he lived with his mother since February 2011 – 14 months prior to his mother's death in April 2012. Moreover, his mother "was disabled with cancer" and thus Mr. Diaz and his mother could not request permission from NYCHA to add Mr. Diaz to the household until February 2012. For this reason he requests his mother be granted accommodation for her disability in the form of a retroactive approval of Mr. Diaz's occupancy, which he claims began in February 2011. Lastly, Mr. Diaz asserts NYCHA's "one-year requirement" rule for succession rights was never properly promulgated.

NYCHA claims the evidence shows Mr. Diaz did not live in the apartment since February 2011 because Mr. Diaz's mother did not identify him as an occupant of her apartment on the affidavit income she submitted in April 2011; the formal request submitted to the Housing Manager states Mr. Diaz resided at an address different from

his mother's; Mr. Diaz stated in the original letter requesting remaining-family-member grievance that he moved into the apartment in September 2011; and a family friend testified at the hearing that Mr. Diaz did not reside in the apartment until "the end of 2011."

Secondly, NYCHA asserts that because Mr. Diaz failed to raise it at the hearing, he waived the claim that NYCHA should posthumously accommodate his mother's disability caused by cancer and grant retroactive permission. NYCHA also asserts Mr. Diaz never claimed his mother could not submit the request to the Housing Manager because she suffered from mental disability but rather because she was always busy and could not make it to the office before closing time.

Finally, NYCHA asserts that Mr. Diaz waived the claim that the one-year requirement for succession rights was not properly promulgated because he failed to raise it at the hearing, where he was represented by counsel. Furthermore, because the remaining-family-member requirements are policies, not rules or regulations, NYCHA was not required to promulgate the one-year requirement. Nevertheless, NYCHA made the policies publicly available pursuant to a class-action settlement by publishing them in newspapers and posting copies in specified management offices. Additionally, Mr. Diaz's mother's lease and income forms notified her that she was required to request permission to add individuals to the household. And the permission request form informed her of the one-year requirement.

"[C]ourts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious. A rational basis exists where the administrative determination is supported by substantial evidence." *Goldstein v Lewis*, 90 AD2d 748, 749 (1st Dept 1982) *affd*, 59 NY2d 706 (1983). Based on the evidence

presented to NYCHA, the court finds that NYCHA's decision to deny Mr. Diaz's grievance had a rational basis and was not arbitrary or capricious. Mr. Diaz did not lawfully occupy his mother's apartment until his mother requested permission to add him to the household in February 2012 and permission was granted in March 2012. Thus, because he had only lawfully occupied the apartment for about a month prior to his mother's death, he did not meet the one-year requirement.

Furthermore, Mr. Diaz was represented by counsel at the administrative hearing and failed to raise the claims that the one-year requirement was never properly promulgated and that his mother should be accommodated for disability in the form of retroactive approval of Diaz's occupancy in 2011. Thus, it is not proper for this court to consider the issues. *Rivera v New York City Hous. Auth.*, 107 AD2d 404, (1st Dep't 2013).

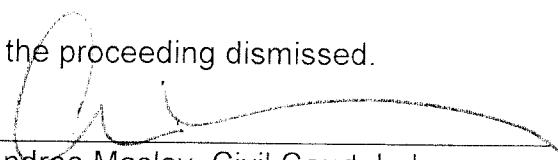
Nevertheless, the claims would not stand because evidence provided shows otherwise. The one-year requirement is explicitly stated in the Housing Manual at page 131, and the permanent permission request signed by Diaz's mother, "Note to Tenant." Moreover, the Housing Manual, page 117, lease agreement, Section 5 Occupancy, and affidavit of income informed Mr. Diaz's mother that she was required to request authorization to add a person to the household. Furthermore, no evidence was provided to show that Mr. Diaz's mother was unable to request authorization because she was disabled. Mr. Diaz's testimony at the hearing was that he and his mother were unable to request permission because he and his mother were always busy and were unable to make it to the office before closing time.

NYCHA's decision to deny Diaz's grievance had a rational basis and was not arbitrary or capricious.

Accordingly, it is

ORDERED that the petition is denied and the proceeding dismissed.

Dated: April 17, 2014



Andrea Masley, Civil Court Judge

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