

Matter of Delgado v New York City Hous. Auth.

2014 NY Slip Op 31226(U)

May 6, 2014

Sup Ct, New York County

Docket Number: 402124/2013

Judge: Eileen A. Rakower

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY
HON. EILEEN A. RAKOWER

Index Number : 402124/2013

PART 15

DELGADO, RENE F.

vs

NYC HOUSING AUTHORITY

INDEX NO. _____

Sequence Number : 001

MOTION DATE _____

ARTICLE 78

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1-4

Answering Affidavits — Exhibits _____ | No(s) _____

Replying Affidavits _____ | No(s) _____

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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: 5/6/2014


_____, J.S.C.

HON. EILEEN A. RAKOWER

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

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 — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15
Justice

IN THE MATTER OF THE APPLICATION OF
RENE F. DELGADO,

Petitioner,

INDEX NO. 402124/2013

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

- v -

MOTION DATE _____

NEW YORK CITY HOUSING AUTHORITY,

MOTION SEQ. NO. 1

Respondents.

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

1-4

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

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).

Cross-Motion: X Yes No

Petitioner, Rene F. Delgado (“Delgado”), pro se, bring this Article 78 proceeding to vacate and annul the New York City Housing Authority’s (“NYCHA”) determination dated October 17, 2013, denying Delgado’s remaining-family-member grievance.

NYCHA cross-moves, pursuant to CPLR §3211 and 7804(f), to dismiss the petition for failure to state a cause of action and on the grounds that the proceeding is barred by documentary evidence.

Delgado claims entitlement to the lease at 388 East 141st Street, Apartment 17C, New York, New York, a one bedroom apartment in the Mott Haven Houses in the Bronx, as a remaining-family-member of Arlene Montanez (“Montanez”). Mott Haven Houses is a public housing development owned and operated by

NYCHA. Montanez is the former tenant of record at apartment 17C. Montanez died on June 10, 2013. Delgado describes Montanez as his common law wife who Delgado has been allegedly living with for 23 years.

NYCHA issued a "Remaining Family Member Claim notice," dated August 4, 2013, and Project Grievance Summary, dated September 3, 2013.

On October 17, 2013, NYCHA issued a "District Grievance Summary," stating, "We dismiss the Remaining Family Member Grievance since you failed to make any showing to substantiate your claim." The findings and reasons state:

The above participant(s) Rene Delgado to the Remaining Family Member hearing scheduled for Thursday, October 17, 2013 at the Bronx Property Management Departments' Office located at 1200 Waters Place, 2nd Floor, appeared for the hearing. Ms. [sic] Delgado is not a legal part of the family composition, and has no legal rights. Tenant of record, Arlene Montanez died on 6/10/2013 and left Rene Delgado in her NYCHA rented apartment. A review of the tenant's folder reveal the following [:] no evidence [sic] no formal request to have Rene Delgado reside, all submitted affidavit of income only shows Arlene Montanez, as the sole occupant of the NYCHA rented apartment at the above address. TOR reported on one Affidavit of Income, that Ms. [sic] Delgado was her emergency contact and her cousin residing at another address, but never the occupant of her NYCHA rented apartment, establishing that she was not a member of the household. As a result of this, the Second Step Grievance is dismissed and denied.

Delgado now submits this CPLR Article 78 Petition, seeking to vacate and annul NYCHA's determination denying his remaining-family-member grievance. Delgado claims he is entitled to succession rights he has "the legal capacity to sue," is "not undesirable and can pass a background check," and has "verified income."

NYCHA allows a "remaining family member" to take over the former tenant's lease. An occupant who wishes to succeed the lease of a tenant of record as a remaining family member must establish, among other things, that he or she:

(a) moved into the apartment lawfully (i.e., was listed on the housing

4]

application and authorized to reside in the apartment at initial move-in; was born into/adopted into/became a ward of the authorized family; or permanently moved in with management's written permission);

(b) remained in the apartment continuously after lawful entry;

(c) remained in the apartment for not less than one year after the date of lawful entry and prior to the date the tenant of record vacates the apartment or dies (the "one-year requirement"); and

(d) is otherwise eligible for public housing in accordance with the admissions standard for applicants.

See NYCHA Management Manual, XII(A)-(B).

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy - Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635, 636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y.2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Here, NYCHA's decision finding that Delgado failed to establish remaining-family-member status based on its regulations was supported by a rational basis. At the time of Montanez's death, Delgado did not have management's written permission as an authorized occupant of the apartment. Furthermore, as for Delgado's claim that Delgado is Montanez's common law spouse, that is not a category of persons eligible for permanent permission under NYCHA's policy. To the extent that Delgado claims to be Montanez's spouse,

NYCHA has submitted documentary evidence in the form of Montanez's death certificate, which indicates Delgado's relationship with Montanez was "common law" and Montanez was married at the time of her death to an individual other than Delgado.

Wherefore, it is hereby,

ORDERED and ADJUDGED that this Petition is denied; and it is further

ORDERED and ADJUDGED that Respondent's cross motion is granted and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: MAY 6, 2014



HON. EILEEN A. RAKOVER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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).