

Matter of Narvaez v New York City Hous. Auth.

2014 NY Slip Op 31576(U)

June 19, 2014

Sup Ct, New York County

Docket Number: 101629/2013

Judge: Jr., Alexander W. Hunter

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

Index Number : 101629/2013
NARVAEZ, LISETTE MERCEDES
vs
NYC HOUSING AUTHORITY
Sequence Number : 001
ARTICLE 78

PART 33

INDEX NO. _____
MOTION DATE _____
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). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

*decided in accordance with the memorandum
order 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: 6/19/14

AWH, 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 33

-----X
In the Matter of the Application of
Lisette Mercedes Narvaez,

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

Index Number:

-against-

101629/2013

New York City Housing Authority,

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).

Respondent.

Alexander W. Hunter, Jr., J.:

Petitioner brings this proceeding to set aside a determination (the Determination) of the New York City Housing Authority (NYCHA) dated September 3, 2013 that upheld a decision (the Decision) of a hearing officer after hearings held on June 19 and August 14, 2013. The Determination denied the petitioner's request for a lease as a remaining family member. For the reasons set forth below, the petition is denied and the proceeding is dismissed.

Underlying Facts and Procedural History

Petitioner seeks a lease to apartment 1-E (the Apartment) in a building located at 120 Humboldt Street, Brooklyn, New York, that is a NYCHA housing project. Her father, Emilio Narvaez, Sr. (the Tenant) was the tenant of record for the Apartment for many years until his death on February 13, 2012. Petitioner had lived

in the Apartment until she moved out in 2001 and she alleges that she moved back in September 2010 to care for her father, who had become ill. She states that she completed and filed the required income affidavits for the Apartment dated January 3, 2011 (the 2011 Income Affidavit) and February 6, 2012 (the 2012 Income Affidavit, together the Income Affidavits). In both of the Income Affidavits, the Tenant was listed as the sole occupant of the Apartment. On February 6, 2012, petitioner submitted a request (the Request) to be added as an additional member of the household. Since her father, the Tenant, died a week later on February 13, 2012, the Request was rejected and petitioner filed a grievance. After further administrative proceedings that rejected her claim, a hearing (the Hearing) was held on June 19, 2013 and August 14, 2013 before a hearing officer. At the Hearing, documents were presented, including the Income affidavits and the Request, and petitioner testified.

On September 3, 2013, the hearing officer issued the Determination that found that petitioner was not eligible for remaining family member status, since she had not received prior written permission to be added as a remaining family member. On or about December 9, 2013, petitioner commenced this proceeding to set aside the Determination, stating that it was her "father's intention to officially list [her] as a tenant . . . [and that she and her father] were unaware of the time constraints involved

with the application process" (petition, ¶ 3). She further states that they "began the process of adding [her] name . . . [but her] father passed away a week later" (*id.*, ¶ 4). She also states that she has been paying the rent and that she has no other accommodation.

NYCHA requests that the court deny the petition and dismiss the proceeding (answer, wherefore clause). It contends that, in the petition and at the Hearing, it was established that petitioner did not receive prior written permission to be added as a remaining family member, since the Request was made on February 6, 2012 and the Tenant died on February 13, 2012. It further notes that the Income Affidavits state that the Tenant was the sole occupant of the Apartment and that, assuming that petitioner filled out the 2012 Income Affidavit, she falsely stated that she was not occupying the Apartment only a week before the Tenant died. It therefore seeks dismissal of the petition, since if petitioner did not meet the criteria for remaining family member status, the Determination cannot be found to be arbitrary and capricious.

Arbitrary and Capricious

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR article 78, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts" (*Matter of Pell v*

5] Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]; Matter of Kenton Assoc. v Division of Hous. & Community Renewal, 225 AD2d 349, 349 [1st Dept 1996]).

The court may not weigh conflicting choices by the administrative agency, if the agency's determination has a basis in reason (Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal, 46 AD3d 425, 429 [1st Dept 2007], *affd* 11 NY3d 859 [2008]). If "a rational basis exists [for the agency's determination], a court may not substitute its judgment for that of the agency . . .; indeed, an agency's determination, acting pursuant to legal authority and within its area of expertise, is entitled to deference" (Matter of Tockwotten Assoc. v New York State Div. of Hous. & Community Renewal, 7 AD3d 453, 454 [1st Dept 2004]). "[E]ven if different conclusions could be reached . . ., a court may not substitute its judgment for that of the agency [if there is a rational basis for the Determination]" (Partnership 92 LP, 46 AD3d at 429; see also *Awl Indus., Inc. v Triborough Bridge & Tunnel Auth.*, 41 AD3d 141, 142 [1st Dept 2007]).

Requirements to Obtain Status as a Remaining Family Member

A person seeking to succeed to a lease in a NYCHA building as a remaining family member must show that she "received written consent for her to reside in the apartment and that she was an

[* 6]

authorized occupant of the apartment for a one-year period before [the death of the tenant of record]" (*Matter of Adler v New York City Hous. Auth.*, 95 AD3d 694, 695 [1st Dept 2012], lv dismissed 20 NY3d 1053 [2013]; *Matter of Collazo v New York City Hous. Auth.*, 93 AD3d 475, 475 [1st Dept 2012]). The petitioner must show that she "obtained written permission for permanent occupancy from the housing manager of the public housing development in which [she] lived with her [father] in order to become a permanent member of [her father's] household" (*Matter of Whitehead v New York City Hous. Auth.*, 102 AD3d 974, 975 [2d Dept 2013]; see also *Matter of Firpi v New York City Hous. Auth.*, 107 AD3d 523, 524 [1st Dept 2013]; *Matter of Echeverria v New York City Hous. Auth.*, 85 AD3d 580, 581 [1st Dept 2011]). "Even if NYCHA were aware [that petitioner] was residing there, the agency is not estopped from denying her remaining-family-member status . . . [and] the payment of rent did not confer legitimacy on petitioner's occupation of the apartment" (*Adler*, 95 AD3d at 695).

Discussion

Petitioner stated that she made and submitted the Request on February 6, 2012, only a week before her father, the Tenant, died (petition, ¶ 4). She never "received written consent for her to reside in the apartment and [showed] that she was an authorized occupant of the apartment for a one-year period before

[the death of the tenant of record]" (*Adler*, 95 AD3d at 695; see also *Whitehead*, 102 AD3d at 975). Moreover, the Income Affidavits list the Tenant as the sole occupant of the Apartment. In particular, the 2012 Income Affidavit, submitted on February 6, 2012, only a week before the Tenant's death, states that he was the sole occupant of the Apartment.

There was "a rational basis" for the Determination that petitioner did not meet the criteria for remaining family member status, since she first raised the issue of her occupancy on February 6, 2012, only a week before her father's death, and she never received written permission for her occupancy from NYCHA (*Pell*, 34 NY2d at 231; *Partnership 92*, 46 AD3d at 429). Finally, "[a]lthough the denial of [remaining family member] status may present a hardship to petitioner . . . , mitigating factors do not provide a basis for annulling [NYCHA's] determination" (*Firpi*, 107 AD3d at 524). Since there was a rational basis for the Determination, the petition must be dismissed (*id.*; see also *Collazo*, 93 AD3d at 475). However, the court exercises its discretion, pursuant to CPLR 8101, and declines to award costs and disbursements.

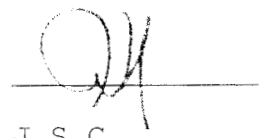
Order and Judgment

It is, therefore,

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: June 19, 2014

ENTER:



J.S.C.
ALEXANDER W. HUNTER, JR.

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).