

Matter of Cooper v Rhea
2014 NY Slip Op 31602(U)
June 25, 2014
Supreme Court, New York County
Docket Number: 401229/2013
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of
ROBERT COOPER,

Petitioner,

For a Judgment Pursuant to Article 81
Of the New York Civil Practice Law and Rules,

- against -

DECISION/ORDER
HON. ANDREA MASLEY

JOHN B. RHEA, as Chairperson of the
New York City Housing Authority, and
The Members of the Board of the
New York City Housing Authority,
Respondents.

FILED

JUN 25 2014

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COUNTY CLERK'S OFFICE
NEW YORK

This is a CPLR Article 78 proceeding seeking reversal of the final determination denying Robert Cooper a lease as a Remaining Family Member ("RFM"). The apartment is located at Marble Hill Houses, a public housing project operated by respondent New York City Housing Authority ("NYCHA").

Mr. Cooper first moved into the apartment a few months after his birth in 1973 and was an original tenant of record. In 1993, Mr. Cooper's mother, Susie Cooper, removed him from the NYCHA Tenant Data Summary and provided a photocopy of his driver's license that showed he had moved to a different borough. Mr. Cooper states that he actually remained in the apartment and did not in fact move out. In April 2008, Ms. Cooper was diagnosed with a malignant brain tumor in an advanced stage and was hospitalized. She was never able to return to the apartment and died in November 2008.

During her hospitalization, Ms. Cooper admitted to her son that she had removed him from the lease in 1993. Ms. Cooper chose to remove her son from the lease because she survived on SSI and was concerned that her son's income would increase

the rent to an amount that they could not afford. Ms. Cooper paid the rent; however, Mr. Cooper contributed every month to the rent by paying Ms. Cooper directly. Ms. Cooper's sister and Mr. Cooper's aunt, Lula Ewings, corroborated this information.

In July 2008, Ms. Cooper informed Mr. Cooper that he had been removed from the lease. He and Ms. Ewings went to the Housing Office to determine if he was on the household composition and to inform the office that Ms. Cooper had been hospitalized. Mr. Cooper learned that he was not on the household composition during that visit. He asked to be added to the lease and requested a Permanent Permission Request ("PPR") form. Instead, he was given a Temporary Permission Request ("TPR") and was assured that this was the correct form.

Together, Mr. Cooper and Ms. Cooper filled out the TPR form. Ms. Cooper was unable to complete the form herself, but Mr. Cooper attests that she understood what was going on. In fact, she wrote on the form that Mr. Cooper had been living at a different address and then signed and dated it. Mr. Cooper completed other portions of the TPR form. The form was returned to the Housing Office and Mr. Cooper was told to wait for a response from NYCHA.

At the time of Ms. Cooper's death several months later, Mr. Cooper had not received a response from NYCHA. Mr. Cooper's brother, Matthew Cooper, called the Housing Office on the date of Ms. Cooper's funeral to notify them of her death and to ask if Robert Cooper needed to anything about the apartment. The project manager told Matthew Cooper, that Robert Cooper needed to provide the Housing Office with copies of rent receipts for the prior six months, and copies of Robert Cooper's personal identification. Robert Cooper provided those items the following day. His driver's license, issued in 2004, indicated that he lived at Ms. Cooper's apartment.

Mr. Cooper followed up with the project manager several times, and on or about August 20, 2009, he met with them to inquire about his RFM status. Records from that meeting indicate that Mr. Cooper was denied RFM because "he was not in the family composition and did not get permission to join the household from the development manager." He was also informed that he must vacate the apartment on or before September 30, 2009. He appealed this decision to the Borough Manager.

In November 2009, Mr. Cooper learned that his request to be added to the lease as RFM had been denied by the Borough Manager because he did not obtain written permission from management to reside in the apartment permanently as RFM at least one year prior to his mother's death. He filed a request for hearing grievance and the hearing was held on January 9, 2013. On March 8, 2013, Hearing Officer Tomici-Hines declined to sustain Mr. Cooper's RFM grievance, and NYCHA approved her decision in its entirety in a final determination dated April 10, 2013. Hearing Officer Tomici-Hines found that there was no failure by NYCHA to follow its own rules and procedures, that NYCHA hearing officers have no discretion to modify the one-year rule, and that Mr. Cooper had no standing to assert a reasonable accommodation claim on behalf of his mother.

"Judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious or lacks a rational basis." *Matter of Chelrae Estates v State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 225 AD 2d 387, 389 (1st Dept 1996). The test for arbitrary or capricious is whether a particular action should have been taken or is justified. *Matter of Pell v Board of Educ. of Union Free School Dist.*, 34 NY 2d 222, 231 (1974). "Arbitrary action is without sound basis in reason and is generally taken without regard to the

facts.” *Id.*

Mr. Cooper makes four challenges to the April 10, 2013 final determination.

First, that NYCHA failed to follow its own lawful rules and procedures when they denied him a PPR form so that he could establish himself as a RFM in the apartment. Mr. Cooper argues that NYCHA’s failure to provide the requested PPR form evidences that NYCHA violated its own internal rules. He relies on *Matter of Gutierrez v Rhea*, 105 AD 3d 481 (1st Dept 2013) in which the First Department held that NYCHA had violated their internal rules when NYCHA failed to inform either petitioner or his mother, the tenant, that the basis of denial was a criminal background check. *Id.* Thus, the petitioner’s constitutionally protected due process rights were violated when he was denied the opportunity for a hearing. *Id.* at 486.

Here, Mr. Cooper was denied a form and not a hearing. In fact, Mr. Cooper had a hearing on January 9, 2013. Further, in *Gutierrez*, petitioner had been living with his mother for a number of years and both petitioner and his mother had actively tried to add the petitioner to household composition. For example, they had filed all of the proper paperwork and submitted all of the required documentation. Petitioner’s mother had also listed petitioner’s income on her income affidavits for all of the years he had been living with her. It is undisputed here that Mr. Cooper’s income was not declared on Ms. Cooper’s income affidavits. Indeed, Ms. Cooper removed Mr. Cooper from the household composition in 1993 and never restored him to avoid declaring his income as household income for calculation of rent.

Second, Mr. Cooper objects that NYCHA’s hearing officer was arbitrary and capricious in interpreting the “one-year rule.” Third, that NYCHA refused to reasonably accommodate Mr. Cooper’s disabled mother by not waiving the “one-year rule” thereby

denying her the right to add her son to the permanent household composition in order to make him a RFM.

Mr. Cooper's second and third causes of actions are rejected. The one-year rule is not "arbitrary and capricious." *Matter of Torres v New York City Hous. Auth.*, 40 AD 3d 328, 330 (1st Dept 2007). Mr. Cooper also relies on *Matter of McFarlane v New York City Hous. Auth.*, 9 AD 3d 289 (1st Dept 2004), for the proposition that the hearing officer's irrationality is evidenced by its failure to waive the "one-year rule." In *McFarlane*, the First Department held that the denial of petitioner's request for RFM status was neither arbitrary nor capricious. *Id.* at 291. Mr. Cooper relies on dicta in which the court states:

one type of circumstance that *could* be of critical importance in establishing a right to be treated as a remaining family member despite the absence of notice or written consent would be a showing that the Authority was aware of the petitioner having taken up residence in the unit, and implicitly approved it. Emphasis in the original.

Here, there was no showing that NYCHA had any knowledge that Mr. Cooper was living there until July 2008 when he went to the office. Ms. Cooper died only a few months later, which does not fall within the one-year rule. The court cannot ignore Mr. Cooper's admission that he had been secretly living with his mother to avoid a higher rent.

Fourth, Mr. Cooper argues that NYCHA's denial of Mr. Cooper's RFM status and termination of his tenancy in the apartment is an imposition of a penalty so disproportionate to the circumstances that it is shocking to one's sense of fairness and constitutes an abuse of discretion. Mr. Cooper's final cause of action is a conclusory statement. Mr. Cooper failed to support the statement with evidence.

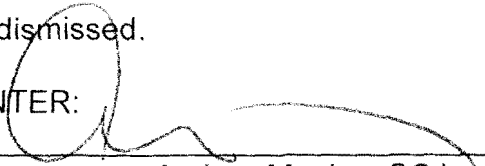
The court is sympathetic to Mr. Cooper's predicament that he was unaware that he was not listed on the household composition. The record shows that he acted

quickly and diligently when this was discovered. However, it does not change the fact that Ms. Cooper violated NYCHA's rules by withholding the information. The court concludes that NYCHA's denial of Mr. Cooper's request for RFM status was neither arbitrary nor capricious and a rational basis exists where the administrative determination was supported by substantial evidence.

ACCORDINGLY, it is

ORDERED, that the petition is denied and dismissed.

Dated: 6/19/14

ENTER: 
Andrea Masley, SCJ

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