

Matter of Maldonado v Crotona Place W. Hous. Dev.
2017 NY Slip Op 32977(U)
April 28, 2017
Supreme Court, Bronx County
Docket Number: 250739/2015
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

②
Index No.: 250739/2015

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In the Matter of the Application of
Diamond Maldonado

Petitioner,

for an Order pursuant to Article 78 of the
Civil Practice Law and Rules

**Decision , Order and
Judgment**

-against-

Crotona Place West Housing Development and
Housing Preservation Development

Howard H. Sherman
J.S.C.

Respondents

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The following papers numbered 1 to 5 read on this ARTICLE 78 Proceeding

- Amended Petition , Exhibits 1
- Verified Answer to Amended Petition, Exhibits A-P 2
- City's Memorandum in Opposition 3
- Affirmations in Opposition CROTONA 4
- Affirmation in Reply 5

2017 MAY -4 P 2632
OFFICE OF THE
BRONX COUNTY CLERK
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Facts and Procedural History

In this Article 78 proceeding, Petitioner Diamond Maldonado (Maldonado) challenges the final determination of the respondent New York City Department of Housing Preservation and Development (HPD) denying her application for status as a remaining family member of the household of her now deceased mother, Anna Arocho (Arocho) entitled to succeed to her late mother's "tenant-based" Section 8 rent subsidy.

Since July 2007 Arocho was a rent-stabilized tenant in a building owned by the respondent not-for-profit Housing Development Fund Corporation (HDFC), Crotona Park West Development (Crotona Park),¹ and continuously since 1993, she participated in the Housing Choice Voucher Program (HCV), known as Section 8, a federally funded program administered by the United States Department of Housing and Urban Development (HUD) pursuant to the Housing and Community Development Act of 1974, codified in 42 U.S.C. § 1437f. Respondent New York City Department of Housing Preservation and Development (HPD) is the local public housing agency (PHA) charged with general administration of the program. In compliance with 24 C.F.R. § 982.54 HPD is required to adopt an administrative plan establishing local policies for administration of the program in conformity with HUD requirements.

The rent-stabilized lease executed by Arocho and Crotona Park at the commencement of her tenancy identifies her immediate family as consisting of her minor children Diamond Maldonado, and Richard Flores.

Arocho filed her annual Section 8 certification on November 8, 2012 stating that her household consisted of herself, and Richard Flores, a full-time student, and petitioner, who, it is noted, was then nineteen years of age, and as of September 2012,

¹ s/h/a Crotona Place West Housing Development

unemployed [Exhibit B] .²

By notice entitled "Request To Remove Household Member" (RRHM) dated February 21, 2013, Arocho sought to remove petitioner from the household composition. The "Tenant Self-Certification of Information" form of the same date contains the following "[m]y daughter Diamond Maldonado left my apartment on Feb 2nd, 2013", and "[we] don't speak at all", and that she did not know "where she's at for any information now." The certification was signed by Arocho in the presence of an HPD staff member [Exhibits C,F].

On April 6, 2013, Arocho filed another RRHM advising that "Diamond Maldonado no longer lives with me since February 2013." [Exhibit D]

On May 1, DHPD sent to Arocho by certified mailing, a Pre-Termination Notice advising her that her subsidy may be terminated for failure to provide proof that Maldonado "is no longer there and proof that she no longer works for Progressive Home Health Services." She was also advised that she could request a conference with HPD staff to review her file [Exhibit E].

On May 6, 2013, Arocho dropped off the RRHM of February 21st and supporting certification, and a "Family Composition letter" at the agency's Division of Tenant Resources [Exhibit F].

² Exhibits to HPD's Answer to Amended Petition.

By undated notice Crotona Park West advised the Department of Social Services, that Arocho was the sole member of her household [Exhibit P].³

Arocho filed her 2014 certification package in February, listing herself as the sole occupant of her apartment and providing supporting documentation confirming that as of July 2013, Richard Flores was in foster care [Exhibit G]. Arocho was certified for continued voucher eligibility, and her household rent was calculated accordingly [Exhibit I]. She died on September 3, 2014, and her rent subsidy was terminated effective September 30, 2014.

By notice dated December 18, 2014, Diamond Maldonado requested reinstatement of Section 8 subsidy benefits and an informal hearing, asserting that she never left the premises, and by letter dated January 6, 2015, HPD advised that petitioner could not retain use of the Section 8 voucher, and had no standing to appeal because she was not a member of her mother's household for at least six months before her death.

In January 2015, the respondent HDFC commenced a licensee holdover proceeding in the Housing Part of the Civil Court seeking to regain possession of the subject premises.

Petition

Maldonado seeks : 1) to reverse and to annul as arbitrary and capricious and

³ The notice appears to have been date-stamped as received by DSS on February 7, 2014 .

contrary to the respondent agency's rules and regulations, and applicable federal law HPD's determination to remove her from the household composition ; 2) to enjoin the agency to reinstate Section 8 subsidy retroactive to the date of its termination, and to issue payment of petitioner's rent retroactive to the date of the subsidy termination , or alternatively, 3) to reverse and annul the determination denying her a hearing to challenge the denial of her remaining family member status and participation in the HCV Program, and 4) an award of legal fees in favor of petitioner as against DHPD in an amount to be determined . Petitioner also seeks a stay of all further proceedings by the respondent HDPC from enforcing any judgment in the pending proceeding in the Housing Part of the Civil Court of the City of New York .

Contentions of the Parties

Petitioner asserts that she has lived continuously with her mother until her death, and any attempts to remove her from the family composition in 2013, were ineffective as unsupported by the required documentation , and were motivated by Arocho's medical conditions "that diminished her capacity and judgment." She argues that DHPD failed to follow its own procedures when removing her from the household composition.

In support of her position , petitioner relies solely on certain documents contained within her mother's HPD tenancy file, noting that neither RRFM filing include, as is required, any documentation of the departing member's new address, nor

an explanation as to why it was not provided. Also submitted is the "Pre-Termination Notice" from DHPD dated May 1, 2013 [Exhibit K]. Contemporaneous notes in the file dated March 27, 2013 indicate that HPD was in touch with the landlord concerning petitioner's residency in the apartment, and requested verification of wage information for Maldonado and authorization for the submission of that information by her employer. Also submitted are printouts from the Department of Social Services for the period 03/26/13 through 10/24/13 indicating that Arocho included petitioner and her brother as part of her family composition for purposes of food stamp benefits.

HPD argues that petitioner lacks standing to challenge the agency's determination because according to the RRFM requests, as well as the subsequent , and last certification , the decedent was the sole member of her household when she passed away, and nothing in the administrative record indicates otherwise. Even were petitioner to demonstrate standing to commence this proceeding, the agency argues that its determination was reasonable and rational as Maldonado was not entitled to an informal hearing to administratively appeal the termination of the deceased's subsidy as she was not participant in the Section 8 program (see, 24 C.F.R. § 982.555).

In addition, to the extent petitioner seeks to compel the agency to reverse and annual its determination, and grant her remaining family member status, she fails to establish a clear and absolute right to the relief sufficient for mandamus relief.

Crotona Park West also argues that the petition be dismissed as time -barred , and maintain that the agency determination is amply supported by a rational basis upon factual determinations within the agency's expertise .

Discussion and Conclusions

Upon consideration of the papers on submission and oral argument thereon, the court finds that on the record here, petitioner , who, at the inception of a subsidy expressly designed to provide assistance to lower-income families, was , and as of 2012, remained , a member of an assisted family household annually certified to the local public housing agency, has established both an imminent non-conjectural injury in fact, and status among those whose interests are sought to be protected by the Section 8 subsidy program. This showing is sufficient to establish standing to challenge the agency's denial of the succession to her mother's HCV (see, *New York State Assn. of Nurse Anesthetists v. Novello*, 2 N.Y.3d 207, 211, 778 N.Y.S.2d 123, 810 N.E.2d 405 [2004]).

For purposes of its review of the agency determination , the court's inquiry is limited to a review of whether the challenged agency determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [1], [3]) " *Matter of Figueroa v. New York City Hous. Auth.*, 141 A.D.3d 468, 469, 35 N.Y.S.3d 338 [1st Dept.2016]

It is settled that “[a]n action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (Peckham, 12 N.Y.3d at 431, 883 N.Y.S.2d 751, 911 N.E.2d 813, citing Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321 [1974]). Murphy v. New York State Div. of Housing and Community Renewal, 21 N.Y.3d 649, 652, 999 N.E.2d 524 [2013]

As pertinent here, the HPD Housing Choice Voucher Program Administrative Plan defines a “Remaining Member “ of a Section 8 participant as follows.

5.1.1 Definitions of Family and Household Members

A family member of an assisted tenant family who remains in the unit when other members of the family have left the unit. To be considered the remaining family member of the family, the person must have been a member of the family in a current or prior current or prior certification of the family composition during the family’s participation in the program, and previously approved by HPD to live in the unit.

The plan also provides the following pertinent to the death of the voucher participant.

5.1.4 Family Break-Up

In the event that the head of household moves out of the assisted unit or dies, a remaining adult household member (without children) may retain use of the tenant-based voucher if that adult has been part of the household for at least 180 days, is in compliance with all program rules and regulations and meets all other program eligibility and continued occupancy requirements.

In the event of death of a sole household member, the tenant-based voucher cannot be transferred.

Upon consideration of the undisputed facts here, including the 2014 re-certification and household income filing, and the RRFM filings preceding it, and the tenant's response to the pre-termination notice confirming the removal from the premises of her adult daughter, the court finds that the agency final determination to deny petitioner succession rights to her mother's Section 8 subsidy was neither arbitrary nor capricious, and that it was made in conformity with lawful procedure. It is noted that Petitioner provides no probative proof to support her assertion that the RRFM filings made by her mother were the consequence of Arocho's diminished capacity or judgment, nor statutory support for the contention that they were ineffectual. The record contains no proof that after February 2014, the tenant sought the PHA's approval of a change affecting household composition or family income (see, 24 C.F.R. § 982.551[h][2]), indicating Maldonado's return.

In the specific context of this case, the agency's application of its own regulations, evidence "genuine reasonableness and rationality" (Matter of Murphy v New York State Div. of Hous. & Community Renewal, 21 NY3d 649, 654-655 [2013], quoting Koppersmith v Dowling, 93 NY2d 90, 96 [1999]).

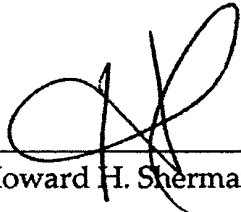
Accordingly, it is

ORDERED and ADJUDGED that the petition be and hereby is denied in its entirety and the proceeding dismissed, and it is further

ORDERED that the stay of the licensee proceeding in the Housing Part of the Civil Court of the City of New York be and hereby is vacated .

This shall constitute the decision , and order and judgment of the court.

Dated: April 28, 2017



Howard H. Sherman