

Matter of Guisintanner v Olatoye
2018 NY Slip Op 30419(U)
March 12, 2018
Supreme Court, New York County
Docket Number: 452437/2017
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32**

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In the Matter of the Application of

WANDA GUISINTANNER,

Petitioner,

-against-

**SHOLA OLATOYE, as Chairperson and Member of the
NEW YORK CITY HOUSING AUTHORITY,**

Respondent.

**For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules**
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**Index No. 452437/2017
Motion Seq: 001**

**DECISION, ORDER &
JUDGMENT**

HON. ARLENE P. BLUTH

The petition to annul respondent's decision denying petitioner Wanda Guisintanner ("petitioner") succession rights to an apartment formerly leased to her sister is denied and this proceeding is dismissed.

Background

Petitioner's sister, Octavia Williams, used to live at an apartment located at 70 Lenox Avenue in Manhattan. Petitioner claims that she moved into Ms. Williams' apartment in September 2012 and that Ms. Williams told the housing manager for her apartment complex (Ms. King) in December 2012 that she needed to leave her apartment to tend to her sick mother.

Ms. Williams claims that in December 2012 she requested, by submitting an application, that petitioner be added to the household composition so that petitioner could take care of Ms. Williams' three children while Ms. Williams was tending to her sick mother. Petitioner claims

that respondent failed to process the request and that Ms. Williams tried to schedule a follow-up appointment with Ms. King— but Ms. King failed to show up.

Petitioner alleges that her sister permanently vacated the apartment in January 2014 (which is a year and a month after the alleged application was submitted). In October 2014, respondent claims that it told petitioner she could pursue a remaining family member grievance. The Property Manager at the apartment complex concluded that petitioner was not entitled to succeed to the apartment because petitioner never requested or obtained management's written consent for her to reside in the apartment.

The Borough Manager upheld this decision in March 2015. Petitioner brought an Article 78 to challenge this determination in June 2015— that proceeding ended via a stipulation whereby respondent agreed to remand petitioner's grievance for an administrative hearing before a Hearing Officer. The Hearing Officer denied petitioner's grievance in a decision dated April 4, 2017.

Petitioner claims that she should be entitled to succeed to the apartment because respondent failed to properly process her sister's application to add her to the household, because respondent knew about her presence through multiple repair requests, and because respondent exhibited terrible record keeping as evidenced by the complete lack of any information in Ms. Williams' tenant file (such as notes about meetings).

In opposition, respondent stresses that petitioner was never a member of the household. Respondent contends that even if it failed to process Ms. Williams' application to add petitioner to her household, petitioner is not entitled to remaining family member status because neither petitioner nor Ms. Williams did anything to follow up on the pending request. Respondent

claims that the lack of records in Ms. Williams' tenant file about adding petitioner to the household suggests that these interactions never took place.

Discussion

"In reviewing an administrative agency determination, courts must ascertain whether there is a rational basis for the action in question or whether it is arbitrary or capricious. Arbitrary action is without sound basis in reason and is generally taken without regard to facts. Moreover, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise" (*Aponte v Olatoye*, – NE3d –, 2018 WL 889540, *1 [2018] [internal quotations and citations omitted]).

Respondent's 'one-year rule' provides that "only where a remaining family member has lived in an original tenant's apartment for one year after having been granted written permission to do so may that remaining family member succeed to the apartment" (*Torres v New York City Hous. Auth.*, 40 AD3d 328, 329, 835 NYS2d 184 [1st Dept 2007]).

In her decision, the Hearing Officer noted that "By her own acknowledgment, the tenant was aware that she had not received permission and did not take further action to obtain permission. Thus, Grievant did not obtain permission for return to residence and hence is not a residual tenant as defined by NYCHA's regulations" (NYSCEF Doc. No. 40 at 3).

The Hearing Officer also found that "The tenant's affidavit states that in 12/12 and other unspecified times she submitted documents requesting permission for Grievant's residence. When she realized that NYCHA had failed to process the request she made another appointment with Ms King, then the manager, both events at unspecified times. The manager failed to appear. The tenant does not state that she then at any time attempted to follow up" (*id.*).

The Court finds that the Hearing Officer's decision was rational. Petitioner's claim that respondent's failure to process the application purportedly sent by Ms. Williams (to add petitioner to the household) was not supported at the hearing by anything other than petitioner's self-serving testimony and an affidavit from petitioner's sister, Ms. Williams. The evidence submitted before the Hearing Officer suggests that even if the Court were to accept petitioner's otherwise unsupported claim that an application was submitted and that Ms. King failed to show up for a meeting, neither petitioner nor Ms. Williams did anything else to ensure that petitioner be added to the household. They did not send letters to Ms. King asking for more meetings; they did not send in another application; they did not even add petitioner to the income affidavits. Instead, the evidence suggests they did nothing.

Respondent argues that Ms. Williams did not submit any income affidavits for 2012 or 2013. Although petitioner disputes that assertion, Ms. Williams did not submit copies of her income affidavits for those years. Petitioner also failed to submit documents showing that she took care of Ms. Williams' school-aged children— for instance, petitioner might have submitted copies of documents showing that she was the emergency contact person while Ms. Williams was in upstate New York.

Therefore, it was rational for the Hearing Officer to conclude that petitioner was not entitled to succeed to the apartment given that petitioner knew that she needed written permission from respondent, she knew she never received that permission and she did not establish that she tried to do anything about respondent's alleged refusal to cooperate.

While the Court recognizes that it may not have occurred to petitioner that she needed to keep hard copies of the application or other key documents, that observation does not lessen

petitioner's burden in the instant proceeding. Here, petitioner must show that the Hearing Officer's determination was arbitrary or capricious. Petitioner's failure to any submit corroborating evidence that respondent ignored its responsibilities or that respondent knew about her presence (through the submission of income affidavits) compels this Court to deny the petition.

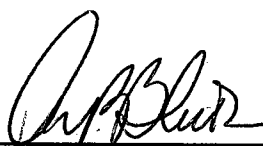
Further, the Hearing Officer stressed that Ms. Williams did not do anything to follow up after respondent purportedly failed to process the application and Ms. King failed to show up for a meeting. This Court is unable to find that the requirement that petitioner receive written permission be overlooked simply because respondent may have failed to process a single application or show up for a single meeting. Self-serving allegations of two discrete events, unsupported by any documentation, cannot support a claim that petitioner should succeed to the apartment.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied, this proceeding is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision, Order and Judgment of the Court.

Dated: March 12, 2018
New York, New York



ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH