

Pullins v New York City Hous. Auth.

2019 NY Slip Op 31939(U)

June 28, 2019

Supreme Court, New York County

Docket Number: 452826/2015

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 452826/2015

JAQUEL PULLINS,

MOTION DATE 05/27/2016

Petitioner,

MOTION SEQ. NO. 001

- v -

THE NEW YORK CITY HOUSING AUTHORITY and SHOLA
OLATOYE, COMMISSIONER,

DECISION AND ORDER

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the petition is granted to the extent of annulling the August 7, 2015 determination by respondent New York City Housing Authority, which approved the July 15, 2015 decision of NYCHA Hearing Officer Desirée Miller-Beauvil denying the "remaining family member" claim of petitioner Jaquel Pullins, and the matter is remanded for a new hearing before a different Hearing Officer consistent with the terms of this decision.

DECISION

In this CPLR Article 78 proceeding, petitioner Jaquel Pullins challenges respondent New York City Housing Authority's determination dated July 15, 2015, that she is not entitled to remaining family member status under respondent's regulations.

Petitioner asserts that respondent's determination was arbitrary and capricious in that it relied upon documents executed by petitioner's mother who suffered from mental infirmities and failed to account for petitioner's continuous residency in the subject apartment. Respondents counter that the Hearing Officer's finding that petitioner did not reside in the subject apartment for one year before the death of her mother, the tenant of record (TOR), is rational, and neither arbitrary nor capricious.

This court agrees with petitioner that respondent's determination affirming the Hearing Officer's decision that rejected petitioner's grievance, was arbitrary and capricious. This court holds that respondent's determination may not stand, as its finding that petitioner moved out the subject apartment where she had lived all her life was not supported by any credible evidence, as it was based solely on the statements of her mother, the TOR, who suffered from severe mental illness, and who had made completely contradictory statements about her daughter's residence in the subject apartment in the course of seeking medical care for such illness.

As stated in Ward v City of Long Beach, 20 NY3d 2013 (2013):

"In reviewing the City's determination- one that was made without a hearing- the issue is whether the action taken had a 'rational basis' and was not 'arbitrary and

capricious'. 'An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts'". (Citations omitted.)

Here, the Hearing Officer determined that petitioner was not entitled to succession rights because she had not been continuously residing with her mother, the TOR, for one year before her mother's death on July 1, 2013. In making such finding, the Hearing Officer relied solely on the statements that the TOR, petitioner's mother, made in the Family Member Removal Notice and Affidavit of Family Whereabouts Unknown, dated October 7, 2011 and March 21, 2012, respectively, that petitioner, i.e., her daughter, had moved out of the subject apartment on September 20, 2011. The Hearing Officer also relied upon the Temporary Order of Protection dated September 20, 2011, issued by the Criminal Court in favor of the TOR and against petitioner, which barred petitioner from any contact with her mother, the TOR, in the home, i.e., the apartment, until March 20, 2012.

What this court finds arbitrary and irrational is that the basis for the Hearing Officer's determination was grounded only upon one set of statements of the TOR, without consideration of the completely contrary statements that the TOR made, as reflected in the records of the medical facility where she was receiving care for her severe mental illness during the time in question.

Most significant are two reports of the Metropolitan Center for Mental Health (MCMH). In the MCMH record dated January 18, 2012, the clinical social worker recorded the detailed mental health history obtained from the TOR during an evaluation that took place on that day. Such record states that the TOR described her present illness, including depression, psychotic symptoms, and multiple suicide attempts, as well as her regimen of prescriptive psychotropic medicine. It also cites the TOR as reporting that "[s]he lives with her grown up, 19 yo daughter and a 3 yo granddaughter." Such statement that as of January 18, 2012, petitioner lived with the TOR **directly contradicts** the TOR's statement made on October 7, 2011 in the Family Member Removal Notice, that her daughter and granddaughter moved out of the apartment on September 20, 2011, as well as the affidavit that she submitted on March 21, 2012, that she did not know her daughter's whereabouts.

In that same evaluation report, as to "risk assessment", the psychiatrist concluded:

"At the time of the interview, pt is assessed to be at moderate risk level for harming herself or others. She currently has symptoms of paranoia, that she had acted on over a year ago, when somebody got too close, however she did not intend to hurt the other person but pushed away. She denies HI [homicide ideation]. She has a long history of CAH [congenital adrenal hyperplasia] that once a month lead to SI [suicide ideation], as they are telling her to end her life, however she had learned to control and ignore her CAH and last acted on it over a year ago, when she attempted to overdose and cut her wrist. She is compliant

with her current medication[] regimen, is future oriented, has supports; *close to her grown up daughter*, who she said needs her help in raising her granddaughter and said that she want[s] to see her granddaughter grow.

Assessment

39 yo female with long h/o depression and psychotic symptoms. On Abilify 5 mg, Zoloft 50 mg, and Trazodone 50 mg, one previous psychiatric hospitalization in Dec 2010, who is seeking outpt psychiatric care. Wishing to see a psychiatrist for medications and to work with a therapist on a weekly basis.

Recommendations

Pt might benefit from higher doses of antipsychotic agent and an antidepressant to achieve resolution of psychotic and depressive symptoms. She stated she still has medications and so no new medications were prescribed at this time." (*italics supplied*).

Moreover, one month before that evaluation and two months after the TOR claimed her daughter had moved from the apartment, the MCMH, on December 29, 2011, prepared an intake, containing the following entry based on an interview of the TOR:

"She has attempted suicide several times, 10 by her account, usually by taking pills, or by cutting herself. The pt. was hospitalized last December, for a week at St. Luke's Hospital. Her daughter called 911 after she had taken pills. *She usually has her daughter nearby in the house to keep an eye on her.*

The pt. currently lives with her 17 year-old daughter and 3 year-old granddaughter. The pt. says that the daughter spends most of her time upstairs (different apartment), with her godmother. The daughter has dropped out of high school, falling far behind in her work, due to the number of absences needed to take care of her mother. The pt. is upset with her daughter because she does nothing else but hang out with her friends." (*italics supplied*).

Such statements of the TOR in December 2011 and January 2012 made to her mental health care providers that both her daughter and granddaughter were living with her were entirely at odds with her representation in the form and affidavits she submitted to respondent on October 7, 2011 and March 21, 2012 that her daughter and granddaughter had moved out of the apartment on September 11, 2011 and that their whereabouts were unknown.

Based on the foregoing, the court finds that the Hearing Officer's determination is devoid of any credible evidence that petitioner ever moved out of the apartment. Therefore, "[respondent's] denial lacks the requisite rational basis, and is therefore, arbitrary and capricious." Ward, id., at 1044.

6/28/2019
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE