

**Matter of Nelson v Russ**

2023 NY Slip Op 32944(U)

August 24, 2023

Supreme Court, New York County

Docket Number: Index No. 452442/2022

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21**

*Justice*

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INDEX NO. 452442/2022

In the Matter of the Application of ARNOLD NELSON

MOTION SEQ. NO. 001

Petitioner,

- v -

GREGORY RUSS, as Commissioner of the NEW YORK CITY  
HOUSING AUTHORITY,

**DECISION + ORDER ON  
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

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

Upon the foregoing documents, and upon hearing oral arguments, the Petition is denied and this proceeding is dismissed.

Petitioner ARNOLD NELSON Article 78 commenced this proceeding to vacate and annul Respondent New York City Housing Authority's (NYCHA) May 10, 2022 decision which determined that the Petitioner was not entitled to remaining family member succession to his mother's, Gladys Nelson (now deceased), apartment, and to stay NYCHA's measures to enforce his ineligibility.

On May 10, 2022, Hearing Officer Arlene Ambert issued a decision on behalf of NYCHA denying Petitioner Remaining Family Member status after a Remaining Family Member grievance hearing. The Hearing Officer denied Petitioner's grievance because he was not on Gladys Nelson's household composition for the one-year period prior to her death, on September 12, 2018.

It has long been held that judicial review pursuant to CPLR §7803 is limited to whether there was a rational basis for the administrative agency's determination, whether the determination was arbitrary and capricious or whether there was an abuse of discretion. (*See Pell v. Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cnty.*, 34 N.Y.2d 222, 313 N.E.2d 321 [1974]; *Gilman v N.Y. State Div. of Hous. & Community Renewal*, 99 N.Y.2d 144, 782 N.E.2d 1137 [2002]). "[T]he interpretation given to a regulation by the agency which

promulgated it and is responsible for its administration is entitled to deference if that interpretation is not irrational or unreasonable.” (*Gaines v. New York State Div. of Hous. & Cmty. Renewal*, 90 N.Y.2d 545, 548–49, 686 N.E.2d 1343 [1997]).

Upon review, there was a rational basis for NYCHA’s decision denying the Petitioner’s grievance.

It is clear from the evidence reviewed by the Hearing Officer that the Petitioner had been removed from the family composition as early as 2013, that both the tenant of record (Gladys Nelson) and the Petitioner were both well aware of that fact, and that no efforts were taken in the approximately five years before her death to add the Petitioner to the family composition.

The Hearing Officer took particular note of the fact that when the Petitioner realized in 2013 that he was no longer part of the family composition, he discussed being added to the family composition with his mother. However, this was not done, apparently, due to both the Petitioner and his mother becoming overwhelmed by caring for his father. Thereafter, sometime in 2016-2017 the Petitioner next spoke with his mother about being added to the family composition. Again, this was not effectuated, apparently again due to the Petitioner having to care of his ailing father. (NYSCEF Doc. 4). The Hearing Officer also noted that there was no evidence that the Petitioner’s removal from the family composition was done in error and there was no evidence that the removal was a surprise to Gladys Nelson. In the five years that transpired between when the Petitioner apparently first learned that he had been removed from the family composition in 2013, and up until Gladys Nelson’s passing in 2018, there were no telephone calls or letters to NYCHA Management to correct this. Relying upon this, the Hearing Officer concluded that Gladys Nelson knew the Petitioner had been removed from the family composition, had intended such removal and took no action to amend the family composition. (NYSCEF Doc. 4).

Gladys Nelson’s Affidavits of Income from 2015 and 2016, which identify her as the sole occupant of the apartment, and her income is the sole income for the apartment (NYSCEF Doc. 17), were also relied upon by the Hearing Officer. In fact, Gladys Nelson’s Affidavit of Income Annual Recertification from 2017 and 2018, the year proceeding her death, likewise identify her as the sole occupant of the apartment, and her income is the sole income for the apartment (NYSCEF Doc. 18). The Hearing Officer found that there was no evidence that any inquiries had been made to NYCHA Management to have the Petitioner added to the family composition or the affidavit of annual income. Thus, the Petitioner’s income had not been disclosed so that accurate

calculations could be made concerning the appropriate rent for the unit. (NYSCEF Doc. 4).

The Petitioner claims that the grievance denial was arbitrary and capricious because the Hearing Officer applied a rule concerning written permission to join the household that was in place as of 2002, and that same should not apply to the Petitioner because he joined the family composition prior to 2002. This argument is unavailing and is not supported by controlling case law. Moreover, it is clear from the record that the tenant Gladys Nelson was regularly reminded of the requirement to provide a written permission requesting that an additional person be allowed to reside in the unit on her 2002 lease and subsequent addendum(s), which the Hearing Officer also reviewed. (NYSCEF Doc. 16, 19).

The Petitioner also claims that the Respondents did not follow their own guidelines concerning the removal of members of the family composition. However, the Petitioner does not point to any admissible evidence to show that the removal of the Petitioner was not “verified by proper documentation”. In fact, to the contrary, the Hearing Officer relied upon multiple affidavits, prepared by the tenant Gladys Nelson over a period of several years, which reflect that she knowingly identified herself as the sole occupant and sole source of income for the unit. (NYSCEF Doc. 17, 18). The Hearing Officer also relied upon the Tenant Data Summary Forms reflecting the periodic removal of multiple members of family composition, including the Petitioner. (NYSCEF Doc. 23).

Even if its guidelines were not strictly adhered to by NYCHA, internal manuals are generally held to provide guidance to that specific agency, and do not form a basis for civil liability when they are not strictly followed. (*See generally Galapo v. City of New York*, 95 N.Y.2d 568, 744 N.E.2d 685 [2000]; *Est. of Enchautegui v. City of New York*, 192 A.D.3d 404, 139 N.Y.S.3d 539 [1st Dept 2021]). Despite the deference given to how agencies interpret their own rules, “Courts must scrutinize administrative rules for genuine reasonableness and rationality in the specific context presented by a case.” (*Kuppersmith v. Dowling*, 93 N.Y.2d 90, 96, 710 N.E.2d 660, 663 [1999] *see Murphy v. New York State Div. of Hous. & Cmty. Renewal*, 21 N.Y.3d 649, 999 N.E.2d 524, [2013]). Moreover, it has long been held that entities, such as the Respondents herein, “cannot be estopped from invoking [its] regulations”. (*Taylor v. New York State Div. of Hous. & Cmty. Renewal*, 73 A.D.3d 634, 900 N.Y.S.2d 865 [1st Dept 2010], *citing Matter of Schorr v New York City Dept. of Hous. Preserv. & Dev.*, 10 N.Y.3d 776, 779, 886 N.E.2d 762 [2008]).

Here, the facts show that the Hearing Officer gave great consideration to the fact that the Petitioner acknowledged that he and the tenant were well aware of the fact that the Petitioner was no longer a member of the family composition five years prior to her death, and that the Petitioner's income was not included for unit in the five years preceding the tenant's death. Even if it can be said that NYCHA failed to strictly follow its own guidelines, the fact remains that under the circumstances, there was clear evidence considered by the Hearing Officer that the Petitioner had been removed from the family composition, was aware of the removal for approximately five years, and nothing was done during that time to add him to the family composition.

Thus, there is nothing in the record to suggest that the Respondents' denial of the Petitioner's grievance was arbitrary or capricious. Nor is there anything to suggest that the Respondents' denial was irrational or unreasonable given the applicable law and the clear facts in this matter. Although significant personal struggles may have led to a delay in the Petitioner's alleged efforts to rectify this, it is clear from the record that the Hearing Office was not presented with any evidence to support that the tenant Gladys Nelson ever sought to add the Petitioner to the family composition from 2013 up until her death and that there was substantial evidence to support the denial of the Petitioner's grievance.

Accordingly, it is hereby

ORDERED that the Petition is denied and the proceeding is dismissed, and the Clerk of the Court shall enter Judgment accordingly; and it is further

ORDERED that the Respondents request for costs and expenses is denied; and it is further

ORDERED that counsel for Respondents shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

8/24/2023

DATE

DENISE M DOMINGUEZ, J.S.C

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED  DENIED

GRANTED IN PART  OTHER

APPLICATION:  SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE