

Morales v Carrión

2024 NY Slip Op 30748(U)

March 8, 2024

Supreme Court, New York County

Docket Number: Index No. 451491/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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ANGELICA MORALES,

Petitioner,

- v -

ADOLFO CARRIÓN, JR., as
Commissioner of the NEW YORK CITY
DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,
and
NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT,
and
61st STREET REALTY ASSOCIATES,
Respondents.

INDEX NO. 451491/2022

MOTION DATE 03/04/2024¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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

The petition to annul the determination of respondent the New York City Department of Housing Preservation and Development (“HPD”) is denied.

Background

Petitioner brings this proceeding to succeed to a Section 8 housing voucher formerly issued to her late uncle, Mr. Mubaraz. She contends that she moved into the subject apartment “around January 2021” and lived there until Mr. Mubaraz’s untimely passing on June 12, 2021.

¹ The Court observes that this proceeding was pending before different judges over the last few years. It was only transferred to the undersigned on March 4, 2024. Nevertheless, the Court apologizes for the lengthy delay in the resolution of this proceeding.

Petitioner insists that she lived in the apartment with Mr. Mubaraz and her young daughter, and that she shared finances with her uncle.

Petitioner maintains that before he passed away, Mr. Mubaraz requested that petitioner be added to his Section 8 household composition. She insists that she met all of the requirements to be added to the household but that HPD delayed processing of the request for over eight months, only to deny petitioner's claim by relying upon its own delay. Petitioner appealed the decision and requested a hearing and HPD denied both requests.

In opposition², HPD contends that petitioner was never an HPD-approved member of the household and does not qualify as a remaining family member in order to succeed to the Section 8 housing voucher. It insists, therefore, that she lacks standing to bring the instant proceeding. Respondent also argue that the petition is time-barred.

HPD observes that as part of Mr. Mubaraz's annual rental subsidy recertification packaged dated March 8, 2021, he asked to add petitioner to his household (NYSCEF Doc. No. 20). It observes that it asked for additional information on various dates in March, April, and June 2021 to add petitioner to the household. HPD argues that Mr. Mubaraz's sister (who had helped complete the annual recertification on her brother's behalf) continued to communicate with HPD for the next three months without telling HP that Mr. Mubaraz had passed away on June 12, 2021.

HPD maintains that it emailed Mr. Mubaraz's sister in November 2021 and observed that petitioner was not entitled to succeed to the Section 8 subsidy because she was not living in the household with HPD's approval for six months prior to Mr. Mubaraz's death (NYSCEF Doc. No. 22). HPD noted that the request to add petitioner was not made until March 2021, so even if

² HPD purports to cross-move to dismiss but did not properly file a cross-motion (there is no notice of cross-motion). However, the Court will overlook this procedural error and consider the papers on the merits.

that request had been granted right away petitioner would not have met the 6-month requirement. HPD insists that under its rules relating to succession rights, petitioner had to officially be a part of the household for at least 180 days prior to Mr. Mubaraz's death and petitioner did not meet that requirement.

Respondent 61st Street Realty Associates submits an answer in which it agrees with HPD's determination and points out that there is nearly \$20,000 due in outstanding rent.

In reply, petitioner contends that the policies in HPD's Administrative Plan do not justify the denial of this petition. She argues that these policies are not binding on the Court. Petitioner maintains that requiring a remaining family member to receive HPD approval for six months prior to the death of the head of household is an irrational requirement. She blames HPD for not timely processing the request to add her to the household.

Petitioner also claims that HPD's decision was made without any consideration of the circumstances and that this proceeding was commenced within the statute of limitations.

Discussion

In an Article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

As a preliminary finding, the Court concludes that this proceeding was timely filed. The notice of termination of the rent subsidy was dated November 12, 2021 and specifically noted that “You may appeal this decision” (NYSCEF Doc. No. 6). And on January 12, 2022, HPD issued a formal denial of petitioner’s request for relief (NYSCEF Doc. No. 23).

Next, the Court must assess whether or not to deny the petition. Petitioner does not dispute the basic facts of this proceeding—that she was not added to the household composition for six months prior to her uncle’s death. She is absolutely correct to note that the lengthy delay in processing her request to be added to the household is not dispositive, although the Court makes no finding about who shoulders the blame. However, even if petitioner had been added to the household composition on the same day her uncle requested, she still would not have been living in the apartment for six months prior to her uncle’s death; the application was filed in March 2021 and he passed away in June 2021.

Petitioner’s argument, therefore, is that HPD should not rely upon its own rules regarding succession rights for section 8 vouchers. This Court disagrees and denies the petition. The fact is that Courts have often upheld HPD’s reliance on the rules in the Administrative Plan (*e.g.*, *Melendez v Cestero*, 79 AD 3d 603, 912 NYS2d 222 [1st Dept 2010] [noting, as an alternative holding, that HPD’s termination of a Section 8 subsidy in accordance with HPD’s Administrative Plan was permissible]; *see also Kamel v Wambua*, 116 AD3d 582, 984 NYS2d 337 [1st Dept 2014] [upholding the termination of a Section 8 rent subsidy, in part, on petitioner’s failure to comply with HPD’s Administrative Plan]). In any event, a requirement that a person be living in the unit for six months prior to the death or vacatur of the head of household is entirely rational. It ensures that there is a chance for HPD to evaluate an application and that the applicant intends

to stay in the unit. And it prevents people from “skipping the line” by moving in when the tenant is right about to move out or is on their deathbed.

The Court also finds that this the penalty does not shock the conscience. This is not a situation in which petitioner lived with her uncle for years and years. Instead, she had just moved in with her uncle in January and applied to be a part of the household composition in March. Unfortunately, her uncle passed away in June, before she was even formally added to the household.

Moreover, the Court finds that no hearing is necessary as the underlying facts are not in dispute (*see Matter of Evans v Franco*, 93 NY2d 823, 687 NYS2d 615 [1999]). Rather, petitioner’s argument is that HPD’s application of its own rules should not be permitted.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

3/8/2024
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE