

<b>Matter of Allen v New York City Hous. Auth.</b>
2012 NY Slip Op 32190(U)
August 8, 2012
Supreme Court, New York County
Docket Number: 400836-2012
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER  
*Justice*

PART 15

In the Matter of the Application of  
YVETTE ALLEN AND NEIL ALLEN,

Petitioners,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

INDEX NO. 400836-2012

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1

Answer — Affidavits — Exhibits \_\_\_\_\_

2, 3, 4, 5

Replying Affidavits \_\_\_\_\_

6

Cross-Motion: Yes  No

Yvette Allen and Neil Allen (“Petitioners”) bring this Article 78 proceeding for review of the New York City Housing Authority’s (“NYCHA”) administrative decision to deny them succession as remaining-family-members to the public housing apartment which was leased to their now deceased mother, Dora Jones (“Jones”). Jones’ apartment is located at 2120 Randall Avenue, Apt. 6G, in the Castle Hill Houses in the Bronx. In September 2008, NYCHA commenced proceedings to terminate Jones’s tenancy for non-desirability and breach of rules and regulations alleging, among other things that she: (1) permitted Natalie Allen, an unauthorized occupant, to reside in her apartment, and (2) the unauthorized occupant possessed heroin on development grounds. Such tenancy was terminated on March 4, 2009 after Jones failed to appear at an administrative hearing.

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk’s Desk (Room 141B).

[\* 2]

Jones died in September 2009, still in possession of the premises. In April 2010, Petitioners, Jones's children, met with the Property Manager concerning their request to become remaining-family- members to Jones's apartment. The Property Manager determined that Petitioners are not entitled to a lease because Petitioners vacated the apartment years ago and Jones never obtained management's written permission for Petitioners to rejoin the household. The Property manager further found Petitioners were not entitled to a lease because Neil failed the criminal background check and Jones's tenancy was terminated on March 4, 2009. In August 2010, Petitioners met with the Borough Manager, who upheld the Property Manager's decision and dismissed Petitioner's remaining-family-member grievance.

A NYCHA hearing was held on December 22, 2011. At the hearing, both Yvette and Neil stated that they used to live in this apartment as children but admitted they have not lived there recently, but had been back and forth to take care of their mother. Although it was admitted that neither of their names were on the lease, Yvette claimed she and Neil were "paying the rent and taking care of some of [Jones's] personal business" before Jones died and estimated they began paying the rent in September or October of 2009.

Housing Assistant Betania Medina testified that Jones did not list either Neil or Yvette as occupants of her household in any of the seven affidavits of income she submitted between 2003 and her death. She testified that Jones did not seek permission for Petitioners to be added to the family composition and management had no knowledge Petitioners resided in the apartment until seven months after Jones's death, when Yvette notified management that Jones had died. NYCHA Investigator Michael Santangelo testified that he conducted an investigation with respect to Neil's criminal background and found that Neil had been convicted for five misdemeanors since 2006.

After recounting the testimony, the hearing officer denied Petitioner's grievance. The grievance was denied on the grounds that Petitioners failed to obtain permission from the development manager to join tenant's household; because the tenancy was terminated on March 4, 2009; and due to Neil's ineligibility to succeed to the lease until September 16, 2014 because of the results of his criminal check.

"Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself

dispose of the issues in the proceeding.” (See, CPLR 7804[g]). As Petitioner has not raised the substantial evidence standard in its petition, this proceeding remains before this court.

It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency’s determination but must decide if the agency’s decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency’s determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency’s determination “arbitrary and capricious” if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

The hearing officer’s decision to deny tenancy to Petitioners as remaining-family-members is supported by a rational basis. First, NYCHA specifically prohibits family members who remain after a tenancy has been terminated from obtaining remaining-family-member status. Petitioners, therefore, do not qualify as remaining-family-members under NYCHA’s policy because NYCHA terminated Jones’s tenancy on default for nondesireability and breach of NYCHA rules and regulations prior to her death. Moreover, NYCHA rules require Jones to obtain written permission from the development manager to permanently add Petitioners to her household composition. Jones never submitted such a request and management never granted Petitioners permission to rejoin Jones’s household. Further, NYCHA policy requires Petitioners to be otherwise eligible for public housing to succeed Jones’s lease as remaining-family-members. Neil does not qualify as a remaining-family-member, due to his five misdemeanor convictions in the past ten years.

Wherefore, it is hereby,

ADJUDGED that this petition is denied and the proceeding is dismissed.

dispose of the issues in the proceeding.” (See, CPLR 7804[g]). As Petitioner has not raised the substantial evidence standard in its petition, this proceeding remains before this court.

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Wherefore, it is hereby,

ADJUDGED that this petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

DATE: August 8, 2012



HILEEN A. RAKOWER, JSC

Final DISPOSITION

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