

**Matter of Brown v New York City Hous. Auth.**

2012 NY Slip Op 32419(U)

September 20, 2012

Supreme Court, New York County

Docket Number: 102029/12

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 4

Index Number : 102029/2012  
BROWN, RAYMOND  
vs.  
NYC HOUSING AUTHORITY  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 2, were read on this motion to/for Art. 78  
Notice of <sup>petition</sup> Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 2  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this <sup>petition</sup> motion is

DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER

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).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/20/12

[Signature], J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NY  
 COUNTY OF NEW YORK: PART 4

Index No.: 102029/12

In the Matter of the Application of  
 Raymond Brown,

*Petitioner,*  
 -against-

**DECISION, ORDER  
 AND JUDGMENT**

New York City Housing Authority,  
*Respondent.*

Present: HON. ARLENE P. BLUTH II

Upon the foregoing papers, it is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

Petitioner, who was represented by counsel at the administrative hearing, but is representing himself here, commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) Determination of Status dated December 21, 2011 which upheld the hearing officer's decision to deny petitioner's remaining family member claim to apartment #71 at 466 East 10<sup>th</sup> Street in Manhattan. Petitioner's mother, Sandra Brown, was the tenant of record of the subject apartment until her death on March 22, 2010. NYCHA opposes the petition.

Background

Sandra Brown and her husband were tenants of record of the subject apartment; when her husband died in 2003, Ms. Brown became the sole tenant of record. While petitioner and his sister were once authorized occupants of the apartment, petitioner moved out in August of 1986. See exh E to answer, Tenant Data Summary and exh F, petitioner's notarized letter dated 8/19/96 stating that he was moving to another address.

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On the annual income affidavits that Ms. Brown submitted in 2008 and 2009, she listed herself as the sole occupant of the apartment; on the 2008 affidavit petitioner was listed as her emergency address, residing at 3165 Decatur Avenue (exh G).

On a form dated March 20, 2010, Ms. Brown requested that petitioner be permitted to join her household; petitioner's address at that time was listed as 3165 Decatur Avenue, Bronx, NY. Two days later, on March 22, 2010, Ms. Brown died while she was visiting relatives in Florida. On March 29, 2010, the NYCHA's Property Manager, who had no knowledge that Ms. Brown had died, granted the request. In April 2010, petitioner notified NYCHA that his mother had died.

### Hearing

A hearing was held on November 2, 2011 before a hearing officer, who heard testimony from petitioner, who was represented by counsel, and from NYCHA. The hearing officer also reviewed various documents which were admitted into evidence at the hearing.

In her findings and conclusions, the hearing officer found that NYCHA did not grant petitioner permission to be added to the household until after his mother died "when there was no longer a tenant household to which [petitioner] could be added". The hearing officer specifically found that NYCHA did not issue permission for petitioner to reside in the apartment until after his mother died, and that petitioner failed to make the necessary showing that he lived in the apartment with his mother for one year after becoming an authorized occupant. Based on the evidence, the hearing officer determined that petitioner was not a remaining family member as defined by NYCHA regulations.

### Article 78 Standard

The “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarbough v Franco*, 95 NY2d 342, 347 [2000], quoting *Matter of Fanelli v New York City Conciliation & Appeals Board*, 90 AD2d 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 AD2d 635, 636 [1st Dept 1983]). Once the court finds that a rational basis exists for the agency’s determination, then the court’s review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v Glasser*, 30 NY2d 269, 277-278 [1972]). The court may only declare an agency’s determination “arbitrary and capricious” if the court finds that there is no rational basis for the agency’s determination. (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]).

Gaining succession as a remaining family member requires an occupant to (1) move lawfully into the apartment and (2) qualify as a specified relative of the tenant of record and (3) remain continuously in the apartment for at least one year immediately before the date the tenant of record vacates the apartment or dies and (4) be otherwise eligible for public housing in accordance with NYCHA’s rules and regulations. See NYCHA Occupancy and Remaining Family Member Policy Revisions General Memorandum (GM) 3692 Section IV (b), as revised and amended July 11, 2003 (exh A). At issue here are requirements (1) - obtaining the permission - and (3) - living in the apartment for one year after getting the permission.

The requirement that permission is necessary is enforceable. See *Aponte v NYCHA*, 48 AD3d 229, 850 NYS2d 427 [1st Dept 2008] “The denial of petitioner’s [remaining family member] grievance on the basis that written permission had not been obtained for their return to the apartment is neither arbitrary nor capricious.” See also *NYCHA v Newman*, 39 AD3d 759 (1<sup>st</sup> Dept 2007); *Hutcherson v NYCIIA*, 19 AD3d 246 (1<sup>st</sup> Dept. 2005) (denied remaining family member status because written permission to move in was not obtained).

That one-year requirement has also been upheld (*see Torres v NYCIIA*, 40 AD3d 328, 330 [1st Dept 2007] holding that when petitioner seeking to succeed to tenant of record’s lease had not complied with the one year requirement, that “there [was] no basis whatsoever for holding the agency decision to be ‘arbitrary and capricious.’”).

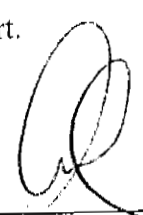
Here, petitioner asserts that when he received a lease in his name and his mother’s name, he thought everything was fine, and moved his son and daughter into the apartment (Petition, para. 3). However, there is no question that he did not reside in the apartment with his mother for one year after having been granted permission. To the extent that petitioner is claiming that his mother’s sudden death prevented him from fulfilling the required full year of authorized occupancy, or that he has does not want to uproot his children, this Court lacks the authority to consider mitigating circumstances or potential hardship as a basis for annulling NYCHA’s determination (*see Guzman v NYCIIA*, 85 AD3d 514, 925 NYS2d 59 (1st Dept 2011)).

Therefore, NYCHA’s determination denying petitioner remaining family member status was rational, and not arbitrary or capricious.

Accordingly, it is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

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

**Dated: September 20, 2012**  
**New York, New York**



HON. ARLENE P. BLUTH

\_\_\_\_\_  
HON. ARLENE P. BLUTH, JSC

~~DECIDED IN ACCORDANCE WITH  
ACCOMPLISHED DECISION ORDER~~

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