

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

2012 NY Slip Op 32547(U)

October 3, 2012

Sup Ct, New York County

Docket Number: 400604/12

Judge: Arlene P. Bluth

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

PRESENT: BLOTH  
Justice

PART Y

JENNIFER FIGUEROA  
- v -  
NYCCHA

INDEX NO. 400953/12  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion to/for Article 78

	PAPERS NUMBERED
Notice of Motion/ <sup>pet</sup> Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
<del>Answering Affidavits</del> — Exhibits	
Repeating Affidavits	
<u>Interim Order of</u>	
<u>5/8/12</u>	

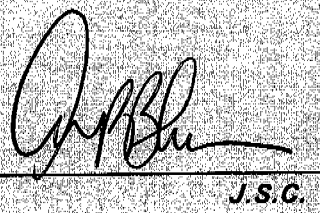
Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion <sup>cross</sup> is granted and the proceeding is dismissed.

**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).

Dated: 10/3/12

  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

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

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Index No.: 400604/12

**In the Matter of the Application of  
Jennifer Figueroa,**

*Petitioner,*

*-against-*

**New York City Housing Authority,**

*Respondent.*

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**DECISION, ORDER  
AND JUDGMENT**

**Present: HON. ARLENE P. BLUTH**

It is ORDERED and ADJUDGED that respondent's cross-motion to dismiss the petition is granted and the proceeding is dismissed.

Petitioner Jennifer Figueroa, who is self-represented, commenced this Article 78 proceeding "to reverse the decision of the New York Housing Court" (order to show cause dated April 25, 2012, para. 2). The Court notes that in her petition (para. 3), petitioner asks the court to reverse the decision of "the housing authority".

NYCHA cross-moves to dismiss this proceeding whether it seeks to reverse the administrative or the judicial determination. Specifically, NYCHA asserts that petitioner cannot use an Article 78 proceeding to collaterally attack an order of the housing court, and petitioner's remaining family member grievance was properly dismissed upon NYCHA's finding that petitioner did not pay use and occupancy. NYCHA's additional grounds for dismissal, that petitioner did not satisfy the service requirements as set forth in Justice Bransten's April 25, 2012 order to show cause, was resolved by this Court's interim decision and order dated May 8, 2012, wherein NYCHA acknowledged service of the signed order to show cause and the Court set a

schedule for service of the answer or motion and reply, if any.

For the reasons set forth below, NYCHA's cross-motion is granted and the proceeding is dismissed.

### Background

Petitioner seeks to succeed to the tenancy of her grandmother, Teresa Santiago, who was the tenant of record of the subject apartment, #8B at 310 East 115<sup>th</sup> Street in Manhattan until her death on February 23, 2011.

After her grandmother died, petitioner filed a grievance seeking remaining family member status. In order to determine if an occupant qualifies as a remaining family member, NYCHA provides a multi-step grievance procedure (exh C to the cross-motion). On May 9, 2011, the Project Manager denied petitioner's grievance (exhibit D) because while petitioner had submitted a permanent permission request to join her grandmother's household in October 2010, management never granted her request. Additionally, the Project Manager noted that petitioner owed over \$1,000 in use and occupancy at the rate of \$221 per month, and when asked about the rent arrears, petitioner said "that she had other bills to pay since she had children". Finally, the Project Manager stated that petitioner had not submitted all of the documents requested by management.

By decision dated July 29, 2011, the Borough Office dismissed petitioner's grievance on the grounds that she failed to make any showing to substantiate her remaining family member grievance. Specifically, the Borough Manager found that petitioner (and her mother and brother) failed to appear for the second-level grievance, that use and occupancy had not been paid, and that



petitioner had never received permission to reside in the apartment. Because the grievance was dismissed, petitioner was not entitled to appeal the Borough Office's disposition to a hearing officer (see exhibit F-District Grievance Summary and exhibit B-NYCHA Management Manual-Chap. IV).

Thereafter, NYCHA commenced a summary holdover proceeding against petitioner, her mother and her brother<sup>1</sup> on the grounds that they were unlawfully occupying the apartment. After petitioner failed to appear for trial on October 14, 2011, the court held an inquest and issued a final judgment of possession in favor of NYCHA. Approximately six months later, petitioner moved to vacate the default judgment. On March 23, 2012, Judge Martino denied her motion on the grounds that she had not set forth any meritorious defense, noting that her administrative "request to get succession" was denied. The court stayed execution of the warrant of eviction until April 30, 2012 "on condition" that petitioner pay a small amount of use and occupancy by April 3, 2012. He further stated that if that payment was not made, the stay was vacated. In support of its cross-motion, NYCHA's counsel represents that petitioner did not pay any use and occupancy in either March or April 2012.

#### Standard of Review

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

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<sup>1</sup>Petitioner's brother had not obtained permission to live in the apartment; petitioner's mother had obtained permission but admitted that she lived in Queens and, as such, had not fulfilled the one-year residency requirement.

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]).

Here, petitioner has not demonstrated that the Borough Manager's determination was arbitrary, capricious, or an abuse of discretion. NYCHA's rules (NYCHA's Management Manual, ch VII, § IV [E] [1] [c] [2]) require that use and occupancy be up-to-date as a condition precedent to pursuing a remaining family member status grievance (also set forth in the grievance procedures instructions annexed as exhibit B, para. 9 to the cross-motion). As petitioner admits that she had failed to pay use and occupancy as it was due, and indeed owed more than \$1000 as of the date of the hearing, it was rational and reasonable for the hearing officer to grant NYCHA's motion to dismiss the grievance, and that determination was not an abuse of NYCHA's discretion. *Hawthorne v NYCHA*, 81 AD3d 420, 421 (1<sup>st</sup> Dept 2011).

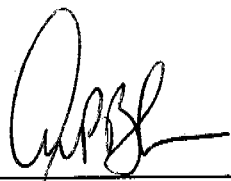
Furthermore, the Supreme Court cannot grant the relief that petitioner seeks in paragraph 2 of her order to show cause-- to nullify an order of the Civil Court. See *Bobian v NYCHA*, 55 AD3d 396, 865 NYS2d 216 (1<sup>st</sup> Dept 2008); *Cherry v NYCHA*, 67 AD3d 438, 889 NYS2d 20 (1<sup>st</sup> Dept 2009). Her remedy was to appeal that decision and order to the Appellate Term, not to

commence an Article 78 proceeding.

Accordingly, it is ORDERED and ADJUDGED that NYCHA's cross-motion to dismiss this proceeding is granted, and the proceeding is dismissed. All stays are vacated.

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

**Dated: October 3, 2012**  
**New York, New York**



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**HON. ARLENE P. BLUTH, JSC**