

Matter of Price v New York City Hous. Auth.
2012 NY Slip Op 32680(U)
October 19, 2012
Sup Ct, NY County
Docket Number: 400970/12
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 : 400970/2012
PRICE, VINCENT
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 Article 78

Notice of 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 ~~motion~~ ^{petition} is

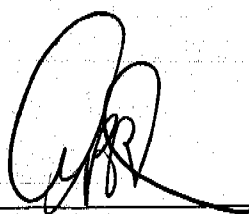
**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER**

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: 10/19/12

 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.: 400970/12

**In the Matter of the Application of
Vincent Price,**

Petitioner,

-against-

**DECISION, ORDER
AND JUDGMENT**

New York City Housing Authority,

Respondent.

Present: HON. ARLENE P. BLUTH

It is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

Petitioner commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) Determination of Status dated February 22, 2012 upholding the hearing's officer's February 9, 2012 decision which denied petitioner's claim to Remaining Family Member status to apartment 11K at 2971 Eighth Avenue in Manhattan. Petitioner's mother, Brenda Luke, was the tenant of record of the subject apartment until her death on April 4, 2009. NYCHA opposes the petition.

A hearing was held on 9/2/11, 10/18/11, 12/6/11 and 2/2/12 before a hearing officer who heard testimony from petitioner, his sister and NYCHA's Resident Services Associate, Dianc Munroe. Petitioner testified that he had lived in apartment 11K since 2005.

The hearing officer reviewed various documents which were admitted into evidence. The documents showed that in 1974, Ms. Luke moved into apt. 4-8H at the subject building, 2971 Eighth Avenue, with her seven children, one of whom was petitioner. In February 1993, Ms. Luke moved to a smaller apartment with her son Anthony (not petitioner). Ten years after that, in 2003, Ms. Luke moved to the subject one-bedroom apartment, 11K, as the sole occupant.

NYCHA also submitted Ms. Luke's most recent Affidavit of Income dated March 4, 2009 wherein she stated that she was the only person living in the apartment. Ms. Munroe testified that the folder for apt. 11K did not contain any request from Ms. Luke that petitioner be added to the lease, or any written permission allowing petitioner to join his mother's household.

Based on the foregoing, the hearing officer found that petitioner, who stated that he has resided in the apartment since 2005, did not prove that he and his mother ever submitted a letter or note requesting that he be added to the household, or that such written permission was granted.

Based on the evidence submitted, the hearing officer determined that petitioner is not a remaining family member as defined by NYCHA regulations.

In support of his petition (para. 3), petitioner asserts that he has paid "rent" on time every month, has attended every court date and has supplied "everything" requested.

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 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 lawfully¹ 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. 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 (1st Dept 2007); *Hutcherson v NYCHA*, 19 AD3d 246 (1st 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 NYCHA*, 40 AD3d 328, 330 [1st Dept 2007] holding that when petitioner seeking to succeed to tenant of record's lease

¹The occupant moves in lawfully if he or she: (1) was a member of the tenant's family when the tenant moved in and never moved out or (2) becomes a permanent member of the tenant's family after moving in (or after moving back in) as long as the tenant of record seeks and receives NYCHA's written approval or (3) is born or legally adopted into the tenant's family and thereafter remains in continuous occupancy up to and including the time the tenant of record moves or dies. (See NYCHA Management Manual, ch IV, sub IV, section (J)(1).

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, it is undisputed that Ms. Luke never received NYCHA’s written permission for petitioner to permanently reside in the apartment. Moreover, because Ms. Luke represented that she was the sole occupant of the apartment in 2008 and 2009, petitioner has not demonstrated that he met the one year residency requirement. *See Weisman v New York City Hous. Auth.*, 91 AD3d 543, 937 NYS2d 189 (1st Dept 2012).

Finally, petitioner’s assertion that he completed an affidavit of income dated 3/30/11, in which he listed himself as living in the subject apartment (annexed to petition as exh. C), was not raised below and therefore cannot be considered by this Court. Even if this Court were to consider it, that does not change the fact that petitioner’s mother never requested that he be added as an occupant and that NYCHA never granted such permission.

Based on the foregoing, the hearing officer’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. All stays are vacated.

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

Dated: October 19, 2012
New York, New York



HON. ARLENE P. BLUTH, JSC