

Matter of Engram v New York City Hous. Auth.

2012 NY Slip Op 32888(U)

December 3, 2012

Sup Ct, NY County

Docket Number: 400921/12

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
Justice

JA PART 16
PART 16

Index Number : 400921/2012
ENGRAM, KEITH
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE: _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is Article 78 petition
is denied and the proceeding is dismissed
in accordance with the accompanying
memorandum decision.

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

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: DEC 03 2012

Alice Schlesinger, J.S.C.

ALICE SCHLESINGER

- 1. CHECK ONE: CASE DISPOSED
- 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 NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of
KEITH ENGRAM,

Petitioner,

Index No. 400921/12
Motion Seq. No.001

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X
SCHLESINGER, J.:

UNFILED JUDGMENT
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Petitioner Keith Engram seeks to succeed to the tenancy of his mother Alberta Engram, who passed away in December 2010 and was the tenant of record of apartment 3D at 671 Westchester Avenue, Bronx, New York, in the public housing development known as St. Mary's Park Houses. Engram, who is 27 years old, claims that his mother intended to add him to the lease and that he qualifies for a lease in his own name now as a "remaining family member" (RFM) of the tenant of record. In this Article 78 proceeding, he challenges the January 13, 2012 decision by New York City Housing Authority (NYCHA) Hearing Officer Arlene Ambert dismissing Mr. Engram's RFM grievance because he was not current in use and occupancy (Answer, Exhibit X). NYCHA has opposed the petition, arguing that the Hearing Officer's decision was rationally based on the record and is consistent with the governing law.

Background Facts

Alberta Engram moved into St. Mary's Park Houses in September 2010. Following Ms. Engram's death a few months later in December 2010, her son Keith

Engram wrote to the Property Manager on January 4, 2011, requesting a lease in his own name based on his mother's alleged intent to add him to the lease before she died (Exh E).¹ The Property Manager denied Engram's request on three grounds: (1) there was no record that the tenant Alberta Engram had requested that her son Keith be added to the lease; (2) any such request would have been denied because adding Mr. Engram to the lease would have resulted in the overcrowding of the three-room apartment suitable for a single occupant only; and (3) as Alberta Engram had moved in on September 29, 2010 and died in December 2010, Keith Engram did not co-occupy the apartment with his mother for at least one year before her death, as required by law for succession to a lease as a remaining family member (Exh F). In that letter, the Property Manager further advised Mr. Engram that he could file a grievance challenging the decision, but he was required to remain current in use and occupancy during that process.

After the Borough Manager approved the Property Manager's decision, Mr. Engram requested a hearing. The hearing was first scheduled for September 8, 2011 but was adjourned various times to give Mr. Engram an opportunity to become current with his use and occupancy. During that time, by Notice dated June 2, 2011 NYCHA asserted various defenses and counterclaims against Mr. Engram. In addition to noting that he did not qualify as a remaining family member and that he also failed to meet the prerequisite of the current payment of use and occupancy, NYCHA alleged that Mr. Engram was otherwise ineligible to reside in public housing until January 9, 2016

¹ All referenced Exhibits are attached to NYCHA's Answer, unless otherwise noted.

because of three convictions; namely, disorderly conduct on May 12, 2010, criminal possession of a weapon on May 9, 2007, and attempted criminal possession of a weapon (a felony) on February 14, 2007 (Exh L).

A hearing was held on September 8, October 27, and December 20, 2011, with a final session on January 11, 2012; both sides presented evidence at the hearing, with Mr. Engram representing himself (Exh J). Among the evidence presented was evidence by NYCHA that Mr. Engram was delinquent in the payment of use and occupancy for several months, totaling \$1,859.17 as of January 2012 at the rate of \$218 per month. Mr. Engram presented evidence that he had secured public assistance from the Department of Social Services to pay some of those monies and was attempting to obtain more.

NYCHA moved at the hearing to dismiss on the ground that Mr. Engram still was not current in his use and occupancy payments, as he still owed use and occupancy for several months immediately following his mother's death in December 2010 and he had not demonstrated an ability to pay those monies. By decision dated January 13, 2012 (Exh X), the Hearing Officer agreed and granted NYCHA's motion to dismiss, finding that:

Although it appears that the recent Fair Hearing Decision requires the NYC Department of Social Services to restore the Grievant's [Mr. Engram's] benefits retroactively as of August 10, 2011, the Grievant did not have a viable definite plan to tender the use and occupancy accumulated prior to August 2011.

NYCHA approved that decision by determination dated February 1, 2012 (Exh Y), after which Mr. Engram timely commenced this Article 78 proceeding.

Discussion

As NYCHA correctly argues in its papers, the law is well-established that NYCHA has the right to dismiss a remaining family member grievance where the grievant is not current in use and occupancy payments. As the First Department recently stated when affirming the dismissal of an Article 78 proceeding challenging a similar NYCHA determination in *Matter of Hawthorne v New York City Housing Authority*, 81 AD3d 420, 420-21 (1st Dep't 2011):

Since respondent Housing Authority's rule (New York City Housing Authority [NYCHA] Management Manual, ch VII, § IV [E] [1] [c] [2]) requires continued payment of use and occupancy as a condition precedent to commencement of a grievance on entitlement to status as a remaining family member, petitioner's acknowledgment that he had failed to pay use and occupancy charges provided grounds for respondent's determination ...

In so holding, the First Department relied on *Matter of Garcia v Franco*, 248 AD2d 263, 264-65 (1998), *lv denied sub nom Rodriguez v Franco*, 92 NY2d 813, a case in which the NYCHA Hearing Officer had dismissed a remaining family member grievance without reaching the merits based on outstanding use and occupancy. The appellate court in *Garcia* reversed the trial court and dismissed the Article 78 petition, which had directly challenged the validity of the NYCHA rule requiring that a grievant remain current in use and occupancy as a condition precedent to a remaining family member grievance on entitlement to a lease. Not only did the court reject the argument that the rule was inconsistent with federal law, but it found that it was reasonable for NYCHA to impose on a lease applicant the same requirement that is imposed on tenants to pay the rent.

Based on these cases, this Court is compelled to find that the Hearing Officer properly dismissed Mr. Engram's remaining family member grievance because use and occupancy payments were outstanding for several months. The record demonstrates that NYCHA and the Hearing Officer gave Mr. Engram repeated opportunities to become current. While he obtained public assistance for some of the months, several months remained unpaid as of January 2012 and Mr. Engram failed to demonstrate that he had any means or any plan to pay the outstanding sum. The Court also notes that, while the merits were not reached, the record reveals that Mr. Engram had very little likelihood of success in obtaining a lease as a remaining family member, not only because he did not co-occupy the apartment with his mother, the tenant, for at least one year before her death, but also because he was ineligible for public housing for a period of years due to his recent criminal convictions.

Accordingly, it is hereby

ADJUDGED that the Article 78 petition is denied and this proceeding is dismissed without costs or disbursements.

Dated: December 3, 2012

DEC 03 2012

UNFILED JUDGMENT

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J.S.C.
ALICE SCHLESINGER