

Matter of Ruiz v New York City Hous. Auth.
2012 NY Slip Op 32957(U)
December 10, 2012
Sup Ct, New York County
Docket Number: 4001445/12
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 : 401445/2012
RUIZ, MICHAEL
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 Motion ^{petition} 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 ^{petition} 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: 12/10/12

[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.: 4001445/12

**In the Matter of the Application of
Michael Ruiz and Jorge Ruiz,**

Petitioners,

-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.

Petitioners, who are self represented, commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) determination dated May 30, 2012 which adopted Hearing Officer Joan Pannell's May 2, 2012 decision made after a hearing. In that decision, the hearing officer denied petitioners' remaining family member claim to apartment 15C at 45 Rutgers Street in Manhattan. Petitioners' mother, Natividad Ruiz, was the tenant of record of the subject apartment until her death on June 28, 2011. NYCHA opposes the petition.

During her tenancy, Ms. Ruiz resided in the subject apartment with several family members until those individuals left the household and she was the sole remaining occupant. It is undisputed that Jorge had once been a member of her household, but that he moved out in July 1999 (see Tenant Data Summary, exh H to answer). On the affidavits that Ms. Ruiz submitted between 2009 and her death in 2011, she did not list either Michael or Jorge as occupants in her apartment; on the last affidavit that she submitted, Ms. Ruiz stated that she was the sole occupant of the apartment (exh D).

On April 9, 2011 Ms. Ruiz submitted a Permanent Permission Request form to add

petitioners to her household; this request was “disapproved” by Management by letter dated June 23, 2011 on the grounds that both individuals failed the criminal background check (exh J).

Ms. Ruiz died five days later, on June 28, 2011.

In July and August 2011 the Property Manager met with petitioners and concluded that neither of them was an authorized member of Ms. Ruiz’s household , and as such they were not entitled to a lease. Thereafter, petitioners met with the Borough Manager who upheld the Property Manager’s decision.

On the first two hearing dates in February and March 2012, petitioners asked for adjournments for additional time to find attorneys, and their applications were granted. The hearing was held on April 6, 2012. NYCHA counterclaimed that Jorge is ineligible for public housing until 2016 because of several criminal convictions, and Michael is ineligible until July 2012 because of a robbery conviction. In her decision, the hearing officer found that management denied Ms. Ruiz’s request for her sons to permanently reside with her, and even if the requests “had been promptly approved [petitioners] would nevertheless be unable to show the required one-year period of authorized residence, and hence are not residual tenants as defined by NYCHA’s regulations”. Finally, the hearing officer noted that she need not and did not need to address NYCHA’s claim that petitioners were currently ineligible for public housing because of their criminal histories.

In reviewing an administrative agency’s determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination “is without sound basis in reason and... without regard to the facts” (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]). Moreover, the determination of an administrative agency, “acting pursuant to its

authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record" (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of New York Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

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 (exh A to Answer).

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). Here, petitioners were

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).

expressly denied permission to join their mother's household in June 2011; as such, they knew that they were unauthorized occupants.

Significantly, in support of their petition, petitioners have not asserted that the decision below was arbitrary and capricious, or an abuse of discretion. Instead, Michael Ruiz says that NYCHA's determination should be reversed because he suffered in foster care, he was on the original lease and has succession rights, he has lived in the apartment continuously since November 2010, he suffers from mental illness and will become homeless without this apartment (pet., para. 3). None of these assertions change the fact that NYCHA expressly denied his mother's request to have him added to the household in 2011, and none of these grounds states a basis for reversing NYCHA's decision to deny him remaining family member status. Finally, this Court lacks the authority to consider mitigating circumstances or potential hardship as a basis for annulling NYCHA's determination (*see Guzman v NYCHA*, 85 AD3d 514, 925 NYS2d 59 [1st Dept 2011]). Therefore, to the extent that petitioner asserts that his situation constitutes mitigating circumstances or potential hardship, that claim is denied on this basis as well.

Jorge Ruiz states that he was born in the apartment and returned in "around October 2009" to live with his mother. However, once-authorized members of a household who leave the household and subsequently return must obtain permission to permanently occupy the apartment. *See Collazo v New York City Hous. Auth.*, 93 AD3d 475 (1st Dept 2012).²

NYCHA's decision to deny petitioners remaining family member grievance has a rational basis; the evidence shows that neither petitioner became an authorized occupant of his mother's

² Both brothers admit that they knew management disapproved their mother's request that they be added to her household.

apartment prior to her death in June 2011; in fact, NYCHA expressly denied them permission.

See Perez v New York City Hous. Auth., __AD3d__, __NYS2d__, 2012 NY Slip Op 07199

(October 25, 2012). Mere unauthorized occupancy, without management's written permission, is insufficient to confer tenancy rights in public housing.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed. Any stays issued by this Court are hereby vacated.

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

Dated: December 10, 2012

New York, New York



HON. ARLENE P. BLUTH, JSC