

Collazo v New York City Hous. Auth.

2010 NY Slip Op 34106(U)

November 17, 2010

Supreme Court, New York County

Docket Number: 114261/09

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ 

PART 13

ROBIN COLLAZO,

INDEX NO. 114261/09

MOTION DATE 11-16-2009

- v -

MOTION SEQ. NO.

NEW YORK CITY HOUSING AUTHORITY,

MOTION CAL. NO.

FILED

DEC 30 2010

The following papers, numbered 1 to 2 were read on this petition to/for Art. 78

COUNTY CLERK'S OFFICE
PAPERS NUMBERED
NEW YORK

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits <u>cross motion</u>	<u>2</u>
Replying Affidavits _____	_____

Cross-Motion: Yes No

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

Petitioner resides at 691 F.D.R. Drive Apt.III (Wald Houses) which is managed by the Respondent New York City Housing Authority. Petitioner filed a grievance with Respondent to be qualified as a remaining family member and succeed to the apartment.

The apartment had been leased to Petitioner's mother, Ms. Carmen Collazo. Petitioner resided with Ms. Collazo and was a part of the family composition until he moved out of the apartment in 1988. Petitioner claims that he returned to live with her and resided in the apartment from 2001, taking care of his mother from that date until her death in 2007 ; However, the last nine affidavits of income filed by Ms. Collazo, from 1999 to 2007, list Ms. Collazo as the only occupant of the apartment [see Respondent's answering affidavit Exh E]. Ms. Collazo passed away on December 18, 2007 [Exhibit L] and on December 24, 2007 petitioner filed a "remaining family member claim" [Exhibit M]. Petitioner filed a grievance with management which was denied on May 8, 2008. Project Manager Elaine Nunez found that Mr. Collazo "was not an authorized member of the household. Ms. Collazo never requested permanent permission for Mr. Robin Collazo to join the household and he is not listed on any of the annual review papers. He is therefore not qualified as a RFM". [see Exhibit O]. The Project Manager's determination was reviewed by the Borough Manager who by decision dated June 19, 2008, agreed with the project manager's disposition, finding that "a review of the file reveals that Robin Collazo was once a member of the household, however, he subsequently vacated and the lessee never requested or

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

obtained permission for him to rejoin the household. " [see Exh. Q & R]. The Grievance was then referred to Hearing Officer Joan Pannell, who held hearings on December 11, 2008; January 8, 2009; April 14, 2009 and May 19, 2009. [see Exh. V].

At the hearing NYCHA presented the testimony of Housing assistant Priti Chattergee. Ms. Chattergee stated that based on NYCHA's records Ms. Collazo removed Petitioner from the family composition in October 1988, providing an address for him in Brooklyn. Ms. Collazo filed income affidavits that did not include petitioner in the family composition and she never requested that he be restored to the family composition for the apartment. Petitioner appeared represented by counsel. He testified, providing no proof to substantiate his claim to remaining family member status. When questioned by his attorney he admitted moving out of the apartment sometime in 1988. He alleges he returned sometime in 2001/2002 but that his mother never placed him on the family composition and he never notified Management that he was living in the apartment. On cross-examination it was revealed that he took a mortgage interest deduction on his taxes, this he attributed to computer error. (The same error appears to have occurred in his returns for the years 2006 and 2007). In addition his W-2 forms lists an address in Brooklyn, not the subject apartment, as petitioner's residence.[see Exh V & Y].

The hearing officer by decision dated June 5, 2009 determined that " The testimony of Grievant was not credible. He used the NYCHA apartment as his address for his IRS returns, but his W2 forms show a different address, and he also claimed each year a home mortgage interest deduction, which is supported by forms supplied to the IRS. He prepared his returns himself, and surely did not make the same "computer error" each year. In addition, Grievant was inconsistent about when he returned to the NYCHA apartment." " In any event Grievant did not show that permission was obtained or even sought for his residence. Accordingly, Grievant is not a residual tenant as defined by NYCHA's regulations." [see Exh. Z].

It is the function of the housing authority Hearing Officer to determine credibility and the weight to be accorded testimony given by a witness in a termination of public tenancy proceeding (see Jimenez v. Popolizio, 180 A.D. 2d 590, 580 N.Y.S. 2d 302 [App. Div. 1st. 1992]; Wooten v. Finkle, 285 A.D. 2d 407, 728 N.Y.S. 2d 152 [App. Div. 1st. Dept. 2001]).

NYCHA'S Board reviewed the Hearing Officer's decision and approved it by decision date June 17, 2009. [See Exh. AA]. Petitioner filed the instant Article 78 petition on October 9, 2009, seeking judicial review of Respondent's determination denying her grievance. [see Article 78 petition].

"... A proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon

the petitioner...."[C.P.L.R. § 217(1)]. This abbreviated time frame is said to serve public policy by freeing government operations from the "cloud" of potential litigation [Best Payphones, Inc., v. Department of Information, Technology and Communications of City of New York, 5 N.Y. 3d 30, 832 N. E. 2d 38, 799 N.Y.S. 2d 182 (2005)]. An administrative determination becomes "final and binding" triggering the four month statute of limitations for commencing an Article 78 proceeding, when the petitioner seeking review has been aggrieved by it. [Rocco v. Kelly, 20 A.D. 3d 364, 799 N.Y.S. 2d 469 [App. Div. 1st. 2005]; Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [2000]. The four month limitations period for Article 78 review runs from petitioner's receipt of the adverse determination [Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [supra].

NYCHA's determination became final and binding when petitioner received notice of the Board determination in June of 2009. He filed this Article 78 Petition within four months of receipt of NYCHA's determination therefore the petition is timely.

According to the "one year rule" only where a remaining family member has lived in an original public housing tenant's apartment for one year after having been granted written permission to do so may the remaining family member succeed to the apartment (Torres v. New York City Housing Authority, 40 A.D. 3d 328, 835 N.Y.S. 2d 184 [App. Div. 1st. Dept. 2007]). As such remaining family member status has been denied to a Grandson who despite residing in the apartment many years, did not become " an authorized occupant of the apartment prior to the Grandmother's death."(Valentin, v. New York City Housing Authority, 72 A.D. 3d 486, 898 N.Y.S. 2d 130 [App. Div. 1st. Dept. 2010]), a Granddaughter who failed to obtain written approval or occupy the apartment continuously for a period of one year after obtaining permission (Hargrove v. Van Dyke Housing, 63 A.D. 3d 741, 880 N.Y.S. 2d 156 [App. Div. 2nd. Dept. 2009]), a Daughter who had not resided in the apartment for one year prior to mother's death and had not applied for permission to rejoin household (Pelaez v. New York City Housing Authority, 56 A.D. 3d 325, 867 N.Y.S. 2d 413 [App. Div. 1st. Dept. 2008]), an occupant who did not enter apartment lawfully and for which no written permission was given to tenant of record (Abreu v. New York City Housing Authority, 52 A.D. 3d 432, 860 N.Y.S. 2d 115,[App. Div. 1st. Dept. 2008]).

The Hearing officer discredited Petitioner's testimony and determined that Petitioner was not part of the family composition, and did not obtain written permission from Management to reside in the apartment permanently. Therefore, petitioner cannot be granted remaining family member status and his petition to annul the Hearing Officer's determination must be denied.

The Landlord Tenant proceeding under index number L & T 019516/09 is transferred and referred back to housing court Part E for further proceedings.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further,



ORDERED, that the Landlord Tenant proceeding under index number L&T 019516/09 is transferred to housing court Part E for further proceedings; and it is further,

ORDERED that all stays of the Landlord Tenant Proceeding are vacated.

This constitutes the decision and judgment of this court.

Dated: November 17, 2010

MANUEL J. MENDEZ
J.S.C.

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J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

*See duplicate original
judgment entered
on December 30, 2010
NG/CC*

FILED

DEC 30 2010

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