

Matter of Page v New York City Hous. Auth.
2013 NY Slip Op 30387(U)
February 19, 2013
Supreme Court, New York County
Docket Number: 401971/12
Judge: Arlene P. Bluth
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH
Justice

PART 4

Index Number : 401971/2012
PAGE, ROMAINE
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARATICLE 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). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this ^{petition} motion is

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

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

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: 2.19.13

_____, 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

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**

Index No.: 401971/12

**In the Matter of the Application of
Romaine Page,**

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, who is self represented, commenced this Article 78 proceeding challenging respondent New York City Housing Authority's (NYCHA) determination dated June 6, 2012 which adopted Hearing Officer Tomicic-Hines's May 9, 2012 decision made after a hearing. In that decision, the hearing officer denied petitioner's remaining family member claim to apartment #5B at 2406 Eighth Avenue in Manhattan. Petitioner's godmother, Loretta Tilley, was the tenant of record of the subject apartment until her death on October 15, 2010. NYCHA opposes the petition.

The hearing

At the hearing, petitioner testified that she moved into the subject apartment in August 2006 to care for Ms. Tilley. Petitioner stated that she met with Management shortly after Ms. Tilley died in October 2010 when she realized she was not an authorized member of the tenant's household because she needed time to move out. Petitioner further stated that NYCHA locked her out of the apartment on January 3, 2011, and she had to go to Housing Court to be restored to possession; once restored, petitioner filed a police report of lost or stolen property.

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).

NYCHA's resident services associate Mr. Haghshenas testified that on the affidavits of income that Ms. Tilley submitted in 2006, 2007 and 2010, she was listed as the sole occupant of the subject apartment; she apparently did not submit affidavits for either 2008 or 2009. He further testified that Ms. Tilley never requested permission to add petitioner to her household, and that Management was not aware that petitioner was residing in the apartment until after Ms. Tilley died.

In her decision, the hearing officer found that petitioner did not demonstrate that she was a remaining family member as defined by NYCHA regulations because Ms. Tilley never sought and never received written permission to have petitioner added to her household, and as such, petitioner had not resided in the apartment for at least one year after receiving the written permission.

Standard of Review

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, while petitioner claims that she resided in the apartment with Ms. Tilley's consent, she admitted that she did not have Management's written consent.

Significantly, in support of her petition, petitioner has not asserted that the decision below was arbitrary and capricious, or an abuse of discretion. Instead, petitioner says that NYCHA's determination should be reversed because she has lived in the St. Nicholas Houses all her life and is well-known to the community (pet., para. 3). Additionally, she claims that after she received an

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).

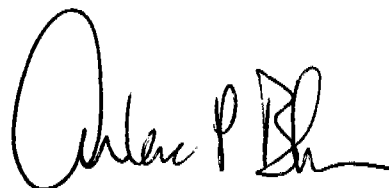
eviction notice which informed her that she had to vacate the apartment, but did not, the marshal evicted her and many of her belonging were lost or stolen. None of these grounds states a basis for reversing NYCHA's decision to deny her remaining family member status. This Court lacks the authority to 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 her situation constitutes mitigating circumstances or potential hardship, that claim is denied on this basis as well.

NYCHA's decision to deny petitioner's remaining family member grievance has a rational basis; the evidence shows (and petitioner admitted) that she never became an authorized occupant of Ms. Tilley's apartment prior to her death in October 2010. 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: February 19, 2013
New York, New York



HON. ARLENE P. BLUTH, JSC

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).