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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice **Part 36**

In the Matter of the Application of
DAMIEN A. ENGRAM,

Petitioner,

For a judgment pursuant to Article 78 of the CPLR

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

INDEX NO. 402189/12

MOTION SEQ. NO. 001

The following papers, numbered 1-3 were considered on this Article 78:

PAPERS	NUMBERED
Notice of Motion/Order to Show Cause, — Affidavits — Exhibits	**1, 2**
Answering Affidavits — Exhibits	**3**
Replying Affidavits	
Cross-Motion: [ ] Yes [X] No	

Upon the foregoing papers, it is ordered that this Article 78 proceeding is decided as indicated below.

Petitioner Damien Engram seeks an order pursuant to Article 78 of the CPLR reversing respondent New York City Housing Authority's (NYCHA) determination, dated June 13, 2012, which denied petitioner's remaining family member grievance.

BACKGROUND

Petitioner currently resides at 424 Morris Avenue, Apt. 3A, Bronx, New York (Subject Apartment). The Subject Apartment is located at Patterson Houses, a public housing development owned and operated by NYCHA. The United States Department of Housing and Urban Development mandated NYCHA to promulgate policies to govern admittance of persons to public housing. *See* 24

C.F.R. § 960.202(a).

In December 2011, the tenant of the Subject Apartment, Sharon Smith (tenant Smith), passed away. Subsequent to tenant Smith's death, NYCHA informed petitioner that he was occupying the Subject Apartment, without a lease, and might be able to pursue a remaining family member grievance. Petitioner met with the property manager in March 2012 regarding such grievance. In a Project Grievance Summary, dated March 20, 2012, the project manager denied petitioner's grievance. In a letter to petitioner, dated April 23, 2012, NYCHA informed petitioner that he could request an informal grievance hearing or submit additional information, by May 7, 2012, or NYCHA would review his claim and render a decision. Petitioner did not request an informal hearing and did not submit any additional information. Thereafter, the Borough Manager upheld the property manager's decision in the District Grievance Summary (Final Determination), dated June 13, 2012, and denied petitioner a hearing.

On October 11, 2012, petitioner commenced this Article 78 proceeding to reverse the Final Determination.

DISCUSSION

Here, the Final Determination was not arbitrary or capricious, and, thus, the petition must be denied. In deciding whether an agency's determination was arbitrary, capricious or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found. *See Heintz v Brown*, 80 NY2d 998, 1001 (1992); *Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 277-278 (1972). Judicial review of an administrative determination is limited to whether the determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." CPLR §7803 (3). The Court of Appeals explained the "arbitrary and capricious" standard in *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 (1974) as follows:

> "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' (1 N.Y. Jur., Administrative Law, § 184, p. 609). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts."

Thus, a court may not substitute its judgment for that of an administrative agency, if there is a rational basis for the agency's determination. See *Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 (2001). The court may not overturn the determination of an administrative agency merely because it would have reached a contrary result. See *Matter of Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 278 (1972); *Matter of Kaplan v Bratton*, 249 AD2d 199, 201 (1st Dep't 1998).

Moreover, it is well settled "that the interpretation given a statute by the agency charged with its enforcement will be respected by the courts if not irrational or unreasonable." *Matter of Fineway Supermarkets, Inc. v State Liq. Auth.*, 48 NY2d 464, 468 (1979); *Matter of Howard v Wyman*, 28 NY2d 434, 438 (1971); *Matter of Lower Manhattan Loft Tenants v New York City Loft Bd.*, 104 AD2d 223, 224 (1st Dep't 1984), *aff'd* 66 NY2d 298 (1985).

Pursuant to the NYCHA's Management Manual, an occupant may succeed to the lease of a tenant of record, as a remaining family member, if certain conditions are established:

> "A. Conditions to Acquire Remaining Family Member Status
> A person who claims to have Remaining Family Member [(RMF)] Status...shall acquire RFM status if (s)he lawfully enters the apartment **and** is in continuous occupancy of the apartment as follows:
> 1. Lawful Entry
> An RFM claimant enters the apartment lawfully if (s)he became part of the household as one of the following:
> a. Original Tenant Family member (according to Section XI. A.); or ...
> c. Obtained Permanent Residency Permission (i.e., written permission) from the Housing Manager (according to Section XI. B. 2); **and**
> 2. Continuous Occupancy
> The RFM claimant must remain in continuous occupancy in the apartment, i.e., be named on all affidavits of income from the time (s)he lawfully enters the apartment until all tenants/lessees move out of the apartment or die."

Verified Answer, Exh. G, NYCHA Management Manual, Chapter IV, Occupancy, Sect. XII. A. Further,

24 C.F.R. § 966.4(a)(1)(v) states that tenants must "request [NYCHA] approval to add any other family member as an occupant of the unit".

Petitioner argues that the Subject Apartment has been in his family for over 50 years. Petitioner states that he was living with tenant Smith, his cousin, since April 2008, and took care of her in 2009, when she was diagnosed with cancer, until she passed away in 2011. In the Final Determination, the Borough Director agreed with the decision of the property manager, and found that tenant Smith "left [petitioner] Damien Engram and Taham Engram, who are cousins in the apartment without management's knowledge." Verified Answer, Exh. P, District Grievance Summary. The Final Determination states that "[w]ritten permission to reside in [the Subject Apartment] was never given to [petitioner] or Taham Engram...[, and that] cousins are not a listed criteria for a family addition to join a household." *Id.* In further support, NYCHA proffers, *inter alia*, the Lease Addendum and Rent Notice for 2008, 2009, and 2010, all of which list tenant Smith as the sole occupant of the Subject Apartment. *See* Verified Answer, Exh. F., Lease Addendum and Rent Notices.

It is uncontested that petitioner is a cousin of tenant Smith, and that he was not on the household composition for the years he claims to have lived in the Subject Apartment. Rather, petitioner argues that the Final Determination should be reversed as he and tenant Smith did not think to add him on the lease, as he was busy taking care of her in her failing health. However, the plain language of the policies promulgated by NYCHA, and 24 C.F.R. § 966.4(a)(1)(v), specifically states that, in order to qualify for succession: (1) a family member of the tenant must have lawfully entered the apartment, requiring written permission from NYCHA, which petitioner here, undisputedly failed to obtain; and (2) must have continuously occupied such apartment, requiring petitioner to be listed on the income affidavits or family compositions, on which petitioner undisputedly failed to be listed. Notwithstanding petitioner's arguments, as indicated, tenant Smith affirmatively submitted documents to NYCHA for the relevant

years listing only her as the sole occupant. Petitioner provides no persuasive arguments or any evidence to support the within petition. Thus, the Final Determination, finding that petitioner is not entitled to succession rights, as he does not meet the minimum requirements to succeed, is rational, and not arbitrary and capricious. Moreover, the Court of Appeals has held that, under these circumstances, an administrative hearing is not required, and, thus, the petition must be denied. *See Matter of Evans v Franco*, 93 NY2d 823, 825 (1999) (a hearing is unnecessary to confirm petitioner's status where the record "is clear that petitioner was never certified by the NYCHA as a family member [and g]iven the 13 unequivocal annual statements by the deceased that she lived in the apartment alone").

Accordingly, it is

ORDERED that the petition is denied and this proceeding dismissed; and it is further

ORDERED that within 30 days of entry of this order respondent NYCHA shall serve a copy upon all parties with notice of entry.

This constitutes the decision of this Court.

Dated: 7/8/13

DORIS LING-COHAN, J.S.C.

Check one: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION
Check if Appropriate: [ ] DO NOT POST

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