

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

King v. New York City Housing Authority

King v. New York City Hous. Auth., 118 A.D.3d 636 (1st Dep't 2014) · Decided June 26, 2014

SUMMARY

The court unanimously confirmed NYCHA’s determination denying the petitioner succession rights as a remaining family member to her late mother’s tenancy. The court held that substantial evidence supported NYCHA’s determination, rejected the petitioner’s unpreserved federal-law argument and mitigating-circumstances claim, and declined to apply estoppel against the governmental agency.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Mazzarelli, J.P.; Acosta, J.; Freedman, J.; Richter, J.; Clark, J.
JURISDICTION	New York
DECIDED	June 26, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding challenging NYCHA's administrative determination denying petitioner succession rights as a remaining family member to her late mother's tenancy.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence; the court also reviews whether arguments were preserved for judicial review and whether the agency determination was arbitrary or otherwise subject to annulment.
PRECEDENTIAL VALUE	Published appellate decision; precedential within the First Department subject to later treatment.
PARTIES	King v. New York City Housing Authority

TOPICS

- judicial review of agency action
- agency adjudication
- administrative law
- landlord tenant
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supported NYCHA's determination that petitioner was not entitled to succession rights as a remaining family member.
2. Whether petitioner's hardship and mitigating circumstances required annulment of NYCHA's determination.
3. Whether petitioner could obtain relief based on an argument that she qualified as a tenant under federal law when that argument was not raised before the agency.
4. Whether petitioner could invoke estoppel against NYCHA.

HOLDINGS

1. Substantial evidence supported NYCHA's determination that petitioner was not entitled to succession rights as a remaining family member because her occupancy was not pursuant to NYCHA's written authority and was not reflected in the affidavits of income.
2. Petitioner's mitigating circumstances, including hardship to her and her family, did not provide a basis for annulling NYCHA's determination.
3. Petitioner's argument that she qualified as a tenant under federal law was unpreserved because it was not raised at the administrative hearing and therefore could not be considered on judicial review; alternatively, the argument was unavailing.
4. Petitioner could not invoke estoppel against NYCHA.

FACTUAL BACKGROUND

Petitioner sought succession rights as a remaining family member to the tenancy of her deceased mother in NYCHA housing. NYCHA determined that petitioner was not entitled to those rights because her occupancy was not pursuant to NYCHA's written authority and was not reflected in the affidavits of income. Petitioner relied on mitigating hardship circumstances and argued that she qualified as a tenant under federal law, but the federal-law argument had not been raised at the administrative hearing.

PROCEDURAL HISTORY

NYCHA denied petitioner's grievance on February 22, 2012. The Supreme Court, New York County, transferred the article 78 proceeding to the Appellate Division. The Appellate Division unanimously confirmed NYCHA's determination, denied the petition, and dismissed the proceeding without costs.

DISPOSITION

dismissed

CASES CITED

- 300 Gramatan Ave. Assoc. v. State Div. of Human Rights, 45 N.Y.2d 176, 180-182 (1978)
- Matter of Adler v. New York City Hous. Auth., 95 A.D.3d 694, 695 (1st Dep't 2012), lv. dismissed, 20 N.Y.3d 1053 (2013)
- Matter of Weisman v. New York City Hous. Auth., 91 A.D.3d 543, 544 (1st Dep't 2012), lv. dismissed, 19 N.Y.3d 921 (2012)
- Matter of Firpi v. New York City Hous. Auth., 107 A.D.3d 523, 524 (1st Dep't 2013)
- Matter of Guzman v. New York City Hous. Auth., 85 A.D.3d 514 (1st Dep't 2011)
- Matter of Moore v. Rhea, 111 A.D.3d 445 (1st Dep't 2013)
- Matter of Torres v. New York City Hous. Auth., 40 A.D.3d 328, 330 (1st Dep't 2007)
- Matter of Abdil v. Martinez, 307 A.D.2d 238, 242 (1st Dep't 2003)
- Matter of Faison v. New York City Hous. Auth., 283 A.D.2d 353, 356 (1st Dep't 2001)
- Matter of Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282 (1988), cert. denied, appeal dismissed, 488 U.S. 801 (1988)
- Matter of Hutcherson v. New York City Hous. Auth., 19 A.D.3d 246 (1st Dep't 2005)

OPINION

PER CURIAM.

Determination of respondent New York City Housing Authority (NYCHA), dated February 22, 2012, which denied petitioner's grievance seeking succession rights as a remaining family member to the tenancy of her late mother, unanimously confirmed, the petition denied, and the proceeding brought pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, New York County [Cynthia Kern, J.], entered June 19, 2012), dismissed, without costs.

Substantial evidence supports respondent's determination that petitioner is not entitled to succession rights as a remaining family member (RFM) (see generally 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 180-182 [1978]). Petitioner's occupancy was not pursuant to NYCHA's written authority and was not reflected in the affidavits of income (see Matter of Adler v New York City Hous.

Auth., 95 AD3d 694, 695 [1st Dept 2012], lv dismissed 20 NY3d 1053 [2013]; Matter of Weisman v New York City Hous. Auth., 91 *637AD3d 543, 544 [1st Dept 2012], lv dismissed 19 NY3d 921 [2012]). Petitioner's mitigating circumstances, including the hardship to her and her family, do not provide a basis for annulling NYCHA's determination (see Matter of Firpi v New York City Hous.

Auth., 107 AD3d 523, 524 [1st Dept 2013]; Matter of Guzman v New York City Hous. Auth., 85 AD3d 514 [1st Dept 2011]). Petitioner's argument that she qualifies as a "Tenant" under federal law is unpreserved for judicial review, having not been raised at the administrative hearing (see Matter of Moore v Rhea, 111 AD3d 445 [1st Dept 2013]; Matter of Torres v New York City Hous.

Auth., 40 AD3d 328, 330 [1st Dept 2007]). As an alternate holding, we find it unavailing (see *Matter of Abdil v Martinez*, 307 AD2d 238, 242 [1st Dept 2003]; *Matter of Faison v New York City Hous. Auth.*, 283 AD2d 353, 356 [1st Dept 2001]). Additionally, petitioner may not invoke estoppel against a governmental agency such as respondent (see *Matter of Parkview Assoc. v City of New York*, 71 NY2d 274, 282 [1988], cert denied, appeal dismissed 488 US 801 [1988]; *Matter of Hutcherson v New York City Hous.*

Auth., 19 AD3d 246 [1st Dept 2005]). Concur—Mazzarelli, J.P., Acosta, Freedman, Richter and Clark, JJ.