

**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.

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.

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