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2021-07-08

Byas v. N.Y.C. Hous. Auth.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 07

BYAS, DEVIN

Index No. 801987-2021E

-against-

Hon. WILMA GUZMAN

NEW YORK CITY HOUSING

Justice Supreme Court


The following papers numbered 1 to _____ were read on this motion (Seq. No. E #001_)
for ARTICLE 78 noticed on _____.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s).
Answering Affidavit and Exhibits	No(s).
Replying Affidavit and Exhibits	No(s).

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the decision & Order annexed hereto.*

Motion is Respectfully Referred to Justice:
Dated: _____

Dated: 7/18/21

Hon. 
WILMA GUZMAN J.S.C.

- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
- 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

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

Index No.: 801987/2021E
Motion Sequence No. 1
Motion Date: 4/26/21

-----X
DEVIN BYAS,

Petitioner,

-against-

NEW YORK CITY HOUSING AUTHORITY (“NYCHA”),
AND GREGORY RUSS, AS CHAIR AND CHIEF
EXECUTIVE OFFICER OF THE NEW YORK CITY
HOUSING AUTHORITY (“NYCHA”), AND
MELROSE HOUSES (LANDLORD)

Respondent(s).

-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion and cross motion:

Papers

Numbered

Order to Show Cause, Verified Petition, Affirmation in Support, Memorandum of Law and Exhibits Annexed.....	1
Verified Answer, Memorandum of Law and Exhibits Annexed....	2
Memorandum of Law in Opposition to Cross Motion, Affidavit in Support and Exhibit Annexed	3

Upon deliberation of the application duly made by Petitioner DEVIN BYAS (hereinafter “Byas”) herein by **ORDER TO SHOW CAUSE and VERIFIED PETITION**, and all the papers in connection therewith for an Order pursuant to CPLR Article 78 and CPLR § 7803(3):

- (1) Vacating Respondent NEW YORK CITY HOUSING AUTHORITY (hereinafter “NYCHA”)’s determination dated October 15, 2020, denying Petitioners remaining family member (hereinafter “RFM”) grievance;
- (2) Ordering NYCHA to grant Petitioner the opportunity to assert his RFM status in a formal hearing before an impartial hearing officer;
- (3) Preliminarily enjoining Respondents NYCHA, Gregory Russ (hereinafter “Russ”) and Melrose Houses from commencing a holdover proceeding against Petitioner or taking further action to recover the subject premises from Petitioner;

is heretofore granted in its entirety.

Procedural Background

This action was commenced by Devin Byas, a 20-year-old college student and the natural grandson and adoptive son of Walter Byas. Walter Byas resided at the NYCHA Melrose Apartments located at 681 Cortland Ave, Apt 13E, Bronx, New York 10451(hereinafter the “Subject Premises”), up until his death on January 11, 2018. At the time of Walter Byas’s death Petitioner was still a minor. Petitioner was denied an RFM claim for succession to Walter Byas’s tenancy. Petitioner was given a RFM Notice by NYCHA on May 13, 2019, in order to proceed with his grievance procedure. On May 7, 2020, Petitioner discovered that the locks were changed and that he was locked out from the Subject Premises. On May 18, 2019, Petitioner submitted his grievance request stating that he had been an occupant at the Subject Premises since he was one year old. Pursuant to an Order by the Honorable Malaika Scott-McLaughlin dated June 26, 2020,

L&T Index# 801172/2020, Defendant NYCHA was ordered to restore Petitioner to the Subject Premises.

Subsequently, Petitioner's first step grievance hearing with the NYCHA Melrose Apartment's project manager, on July 3, 2020, was denied due to NYCHA rules and regulations stipulating that the head of household must add any member to the family composition in order for that member to be granted RFM status. At the second step grievance hearing, on October 15, 2020, Petitioner was again denied his RFM grievance on the grounds that Walter Byas never included Petitioner in his family composition nor had requested written permission to have Petitioner join his household and that claimant never received written permission from the Housing Manager. The second step grievance findings did however conclude that the documentation provided by Petitioner provided proof of use of address at the Subject Premises. Moreover, Director McMillan, in her second step grievance summary order, denied Petitioner's opportunity to appeal his case to a third step grievance proceeding in front of an impartial hearing officer on the grounds that Petitioner failed to make any showing to substantiate his claim. The decision in the second step grievance also did not advise Petitioner of his right to seek Article 78 relief.

The Petition

There are five (5) causes of action in the Petition. The first, pursuant to Article 78, for overturning the second step grievance on account of it being affected by error of law. Petitioner alleges that the determination that there is a requirement, for a person seeking succession rights, to obtain written permission is not in accord with precedent case law and, even if true, an exemption exists for minors who do not need written permission. Petitioner was a minor at the time of his adoptive father's/grandfather's passing. The second, pursuant to Article 78, alleges that the final determination by NYCHA is arbitrary and capricious in not finding that Petitioner made any showing to substantiate his claim after Petitioner was found to be a credible witness concerning key elements in his RFM claim by a judge in his Bronx Housing Court proceedings. The third, alleging that NYCHA violated Petitioner's rights to due process by not granting Petitioner an opportunity for a third step grievance hearing in front of an impartial hearing officer. The fourth, alleging that director McMillian arbitrarily and capriciously denied Petitioner a third step grievance for failing to make any showing to substantiate his claim which Petitioner has demonstrated to have, at a bare minimum, demonstrated a showing to survive the minimal threshold. Thus, Petitioner requests the Court to enjoin Respondents from seeking to evict Petitioner. The fifth, alleging that Director McMillian failed to notify Petitioner of his Article 78 right or otherwise notify Petitioner of his right to appeal, in violation of his due process rights and as such Respondents should be enjoined from evicting Petitioner and order NYCHA to grant a formal hearing.

Written Permission Requirement for RFM claim

Petitioner argues that there is no federal statute or regulation that requires NYCHA's consent to be in writing. In addition, Petitioner submits a copy of the NYCHA Management Manual (hereinafter "the Manual") which provides that any written requirement policy would be exempt in this matter since Petitioner was a minor at the time of Walter Byas' death and as such the Manual sets forth lawful entry requirements for families that do not require the head of

household to obtain written permission from the NYCHA to add adopted children. See NYCHA Management Manual, Ch. 1 § XII(A)(1). Petitioner contends that the Manual provides that family members who were born or legally adopted and remained in continuous occupancy until the head of household's death or departure are exempt from the written approval requirement. As demonstrated, Petitioner contends in his first cause of action that Director McMillan in her second step grievance decision erred in stating that written permission was required and erred in not exempting petitioner on account of his minor status at the time of the head of household's death. Since Petitioner maintained continuous occupancy since prior to his adoption, he should be entitled to RFM status and thereby succession of the tenancy from Walter Byas.

Violation of Petitioners Due Process

In support of Petitioner's request to vacate the determination by NYCHA in denying his second step grievance, Petitioner alleges that the determination was arbitrary and capricious in stating that Petitioner did not have any showing to substantiate his claim when Petitioner brought forth at least some elements to verify his claim that he resided in the subject apartment for at least a year prior to the head of household's death. Petitioner contends that he is allotted a minimal due process right before being terminated of his tenancy. See 24 C.F.R. § 966.52(e). The due process rights extend to family members seeking succession rights. See NYCHA v Shepard, 114 Misc.2d 873, 876 (Civ. Ct. Kings Cty. 1982). Thereby, Petitioner contends that by not being allowed to proceed further, to a third step grievance hearing, in front of an impartial decision maker, he was denied his due process rights. Petitioner contends that while under certain circumstances NYCHA can withhold a grievant from obtaining a third step grievance, that applies only where there was no showing to substantiate a claim. Petitioner claims to have presented, at a bare minimum, some evidence to substantiate his claim. Petitioner further alleges that Director McMillian failed to notify Petitioner of his right to appeal by filing an Article 78 petition. By doing so, director McMillan has violated Petitioners due process rights.

NYCHA's Verified Answer in Opposition

In their answer, Respondents begin by demonstrating that federal regulations do not require the housing authority to grant a formal hearing to every person who makes a bare assertion that he or she is an RFM. Where a claimant fails to show the he or she can qualify for RFM status a District Office can dismiss the grievance without any further right for the claimant to challenge the determination. Respondents list a number of unpublished decisions highlighting the fact that RFM grievances that went without a formal hearing were upheld. In addition, Respondents argue that NYCHA is not obligated to inform tenants of their right to appeal. Respondents further argue that a tenant must notify the development's management of a change in family composition, either through a newly born child or a legally adopted child. Respondents contend that the Court of Appeals and Appellate Division, First Department have repeatedly confirmed denial of RFM status where the grievant was an unauthorized member of the household. See Aponte v Olatoye, 30 N.Y.3d 693, 697 (2018). See also Blas v Olatoye, 161 A.D.3d 562, 562 (1st Dept. 2018). Respondents point to Walter Byas' tenancy to show that Petitioner never was an authorized member of Walter Byas' household. Walter Byas never reported Petitioner's adoption to management. Walter Byas' yearly affidavit of income stated that he lived alone.

Defendants argue that even with Petitioner's limited evidence that he occupied the Subject Premises, Petitioner failed to apprise management that he resided in the apartment before Walter Byas died rendering Petitioner's occupancy unlawful and insufficient to establish a RFM claim. Defendants further argue that since Walter Byas never included Petitioner in his affidavit of income, Petitioner cannot claim to have continuance occupancy to satisfy the one-year requirement for RFM status. Respondents claim to not have any evidence to the facts that Petitioner claims to have occupied the residence since he was one year old. In addition to the forgoing, Respondents argue that Petitioner's failure to pay use and occupancy throughout the pendency of the grievance hearing procedure precludes Petitioner from RFM entitlement.

In reply, Petitioner argues that NYCHA has failed to address the issue that it was an error in law to require Petitioner to have obtained written consent in order to bring forth his RFM claim. In addition, Petitioner contends that it was arbitrary and capricious to have disregarded Petitioner's evidence that he resided in the Subject Premises prior to Walter's passing. Petitioner submits that Respondents acknowledged that Petitioner provided proof of use of address in the second step grievance decision and that Petitioner provided prior findings from the Bronx Housing Court verifying Petitioner as a credible witness concerning his use of address. See Byas v. NYCHA, 2020 N.Y. Slip Op. 23668(U), 2020 N.Y. Misc. LEXIS 4443 (Civ. Ct. Bronx Cty. 2020). Petitioner reiterates his argument that the basic elements of due process must be present before instituting eviction proceedings and that NYCHA is only allowed to deprive a grievant of a third step grievance in the case where Petitioner fails to make any showing to substantiate his or her claim and Petitioner contends to have met the minimal condition of setting forth *any* showing.

With regards to the affidavits of income presented as exhibits annexed to Respondents Verified Answer, Petitioner asserts that those are inadmissible for this Court to determine Petitioner's RFM status. It is a "fundamental tenet of CPLR article 78 review... that "[j]udicial review of administrative determinations is confined to the facts and record adduced before the agency". See Featherstone v. Franco, 95 N.Y.2d 550, 554 (2000). (quoting Yardborough v. Franco, 95 N.Y.2d 342, 347 (2000)). Petitioner claims that Director McMillan in her second step grievance determination contradicted herself by stating that Petitioner submitted documentation providing proof of use of address and as such is distinguished from case law cited by opposition wherein the Petitioner's in those cases failed to provide written documentation and/or case law which dealt with cousins and/or nephews and not adopted children, as is the case presently.

Petitioner cites to Sumpter v. NYCHA 260 A.D.2d 176, 178 (App. Div. 1st Dept. 1999) to validate his assertion that receiving notice of the right to Article 78 proceedings is necessary to uphold the procedural due process prior to an eviction. Petitioner contends that the cases cited by Respondent regarding the lack of necessity to notify Petitioner of their right to Article 78 proceedings are inapposite as they deal with notifying the right to appeal in Spanish or deal with NYCHA's notification responsibility for the proper statute of limitations. Vialez v. NYCHA, 783 F. Supp. 109 (S.D.N.Y. 1991); Clemons v. NYCHA, 110 A.D.3d 500 (1st Dep' 2013); Noel v. NYCHA, 98 A.D.3d 981 (2d Dept. 2012).

Petitioner argues that NYCHA's contention that Petitioner is not entitled to a formal hearing because he did not pay use and occupancy fees throughout the grievance process is a "rigid" application of the of the rules and policies of the Housing Authority. Further arguing that

requiring the grievant party to pay use and occupancy fees puts the Petitioner in a “Catch 22” situation. Petitioner argues that without calculating the income of the Petitioner in order to determine the correct payment amount while not allowing Petitioner to go forward in his grievance could potentially force Petitioner to pay beyond his means, lest he suffer forfeiture of his tenancy. Furthermore, Petitioner claims to have paid the rent portion for every month from September 2018 through May 2019, the time he filed for his initial RFM claim. Petitioner argues that he is a current student with limited funds to pay the use and occupancy fees determination based on the previous occupant’s affidavit of income.

Standard of Review of Administrative Decisions

The role of a court in its examination of an administrative decision, pursuant to CPLR Article 78, is a limited one. The function of judicial review in an Article 78 proceeding is not to weigh the facts and merits de novo and substitute the court’s judgment for that of the agency’s determination. Greystone Management Corp. v. Conciliation and Appeals Bd., 94 A.D.2d 614 (1st Dept.1983). Rather, the standard of review in an Article 78 is whether an administrative determination is arbitrary or capricious, without a rational basis in the administrative record, or in violation of lawful procedure (see CPLR § 7803(3)). “An agency action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.” Figueroa v. N.Y.C. Hous. Auth., 141 A.D.3d 468, 469 (1st Dept. 2016) (quoting Peckham v. Calogero, 12 N.Y.3d 424 (2009)). An administrative determination is afforded deference if it is made with a reasonable basis in law, where there is a rational basis for the administrative determination, the judicial function is exhausted. Howard v. Wyman, 28 N.Y.2d 434 (1971). Although the power of the courts is a limited one the court is “charged with the obligation to insure that the proceeding leading to such determination comported with basic tenets of due process” Padilla v. Martinez, 300 A.D.2d 96, 97 (1st Dept. 2002).

Petitioner’s cause of action to vacate the second step grievance based on an error of law is granted. NYCHA’s determination that written permission must be obtained to properly claim RFM status is not based in any federal statute or regulation requirement. Porter v NYCHA, 169 A.D.3d 455, 461(1st Dept. 2019). Applying a rigid, written consent requirement without considering the particular circumstances would be erroneous. McFarlane v. N.Y.C. Hous. Auth., 9 A.D.3d 289 (1st Dept. 2004). There may be circumstances, outside of written consent that would allow for an RFM succession claim. Porter at 455. “One type of circumstance that *could* be of critical importance in establishing a right to be treated as a remaining family member despite the absence of notice or written consent, would be a showing that the Authority was aware of the petitioner having taken up residence in the unit, and implicitly approved it.” McFarlane at 291. In addition, minors, including adopted children, as is the case with Petitioner, may claim RFM status if he lawfully enters the apartment by becoming a part of the household by joining through family growth – either born, legally adopted, or judicially declared to be the ward of the tenant. See NYCHA Management Manual, Ch. 1 § XII(A)(1). Petitioner is the adopted child of Walter Byas and requiring written permission as stated in the determination in the second step grievance is an error in law and therefore shall be annulled. In addition, Petitioner has demonstrated that he entered and occupied the subject premises from the time of his legal adoption by Walter Byas, the head of household. Petitioner has therefore demonstrated that he entered lawfully and need not provide written permission.

Petitioner's failure to be current with his pay and occupancy fees does not per se bar a RFM grievance. NYCHA v. Alicia, 63 Misc.3d 502, 506 (Civ. Ct. New York City, 2019). Petitioner was put in a precarious position in having to pay use and occupancy fees beyond his means without having NYCHA calculate his income proportionally, and thereby having to forfeit his claim for RFM status. Figueroa, at 470.

The Court finds that Defendants' Determination dated October 15, 2020 was arbitrary and capricious in that Petitioner submitted adequate documentation to substantiate his claim and hereby vacates that decision. Defendants in their determination was affected by error of law by requiring Petitioner to adhere to written request to be added to the household composition particularly since he was not head of household and was apparently was a minor at the time. Moreover, Defendants erred by failed to inform Petitioner of his right to an Article 78 proceeding and it is within Petitioner's due process right to have a third step grievance in front of an impartial hearing officer. Due to the foregoing, Petitioner's motion is granted in its entirety and Defendants are hereby enjoined from commencing or proceeding with a Holdover Proceeding against Petitioner pending a formal hearing on the matter.

Accordingly, it is,

ORDERED and ADJUDGED that Petitioners DEVIN BYAS's request for an Order pursuant to CPLR Article 78 annulling and vacating the final determination dated October 15, 2020 made by Respondent NEW YORK CITY HOUSING AUTHORITY is hereby granted. It is further,

ORDERED and ADJUDGED that the Decision of NYCHA Bronx Borough Director Samantha McMillan denying Petitioner's Remaining Family Member grievance and the opportunity for a formal hearing in front of an impartial hearing officer is annulled and vacated. It is further,

ORDERED and ADJUDGED that Petitioner DEVIN BYAS be granted a formal hearing in front of an impartial hearing officer within ninety (90) days of service of this Order with Notice of Entry. It is further,

ORDERED and ADJUDGED that the Respondents, NEW YORK CITY HOUSING AUTHORITY are enjoined from commencing holdover proceedings against DEVIN BYAS until after a final determination on his Remaining Family Member grievance. It is further,

ORDERED and ADJUDGED that Petitioners DEVIN BYAS shall serve a copy of this Order with Notice of Entry within thirty (30) days of entry of this Order.

The foregoing constitutes the decision and order of this Court.

Dated: July 8, 2021



HON. WILMA GUZMAN, J.S.C.

fax:
(347) 679 6699

At IAS Part 7, Room _____
of the Supreme Court of the State of
New York, Bronx County, at the
Courthouse located at 851 Grand
Concourse, Bronx, City of New
York, on February 16th, 2021

WILMA GUZMAN

IA-7

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY, PART 7, Rm. 624

-----X
In the Matter of the Application of
DEVIN BYAS, -

Index No. 801987/2021

Petitioner,

ORDER TO SHOW CAUSE

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

NEW YORK CITY HOUSING AUTHORITY ("NYCHA"), and

GREGORY RUSS, as Chair and Chief Executive
Officer of the New York City Housing Authority
("NYCHA"), and

MELROSE HOUSES (Landlord),

Respondents.
-----X

PLEASE TAKE NOTICE that upon the annexed Verified Petition of Petitioner DEVIN BYAS ("Petitioner"), verified on January 28, 2021, the annexed Memorandum of Law, the annexed exhibits, and on all the proceedings and papers had herein, Petitioner will move this Court, by way of a virtual appearance on Microsoft Teams, at IAS Part 7, Room 624, at 851 Grand Concourse, Bronx, NY, 10007, at 9:30 a.m. on ~~February~~ ^{MARCH} 22nd 2021, or as soon thereafter as counsel may be heard, WHY an Order and Judgment should not be entered pursuant to Article 78 of the Civil Practice Law and Rules:

1. Vacating the October 15, 2020 Decision of NYCHA Bronx Borough Director Samantha McMillan, denying Petitioner's Remaining Family Member ("RFM") grievance, as affected by an error of law and arbitrary and capricious; and
2. Ordering NYCHA to grant Petitioner the opportunity to assert his RFM status in a formal hearing before an impartial hearing officer; and
3. Preliminarily enjoining Respondents NYCHA, RUSS, and MELROSE HOUSES from commencing a holdover proceeding against Petitioner or taking any further action to recover the subject premises from Petitioner; and
4. Granting Petitioner such further relief as this Court deems just and proper.

SUFFICIENT CAUSE THEREFORE APPEARING, LET service of a copy of this order by anyone, together with all papers appended hereto, be made by ^{OVERNIGHT DELIVERY} email service upon Respondent's attorneys', the NYCHA Law Department, 90 Church Street, New York, NY 10007, by 5 p.m. on February TH 25, 2021, be sufficient.

WJ
J.S.C.

Enter,

WJ

WILMA GUZMAN

*Parties are to contact chambers at (718) 618-4403 or
cisales@nycourts.gov to obtain access information for the virtual
court appearance by ^{5pm} March 18, 2021*