

**24 BCH II Housing Development Fund Company, Inc., As Nominee for
2476 BCH Owners, LLC, Petitioner v. Jonathan Lagoa, Respondent, "John
Doe" and "Jane Doe" Respondents, L&T 41100/14
L&T 41100/14**

**Civil Court, Bronx County, Part S
NYLJ Publication Date: Mar 25, 2015**

Cite as: 24 BCH II Housing Development Fund Co., Inc. v. Lagoa, L&T 41100/14,
NYLJ 1202721318812, at *1 (Civ., BX, Decided March 3, 2015)

L&T 41100/14

Judge John Stanley

[Read Summary of Decision](#)

Decided: March 3, 2015

DECISION/ORDER

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In this licensee proceeding commenced pursuant to RPAPL Section 713(7), the petitioner seeks recovery of the subject premises located in a project-based Section 8 building financed by the United States Department of Housing and Urban Development (HUD). The petitioner claims the respondent entered into possession pursuant to a license granted by the tenant of record, Norma Villaronga, who is now deceased. Respondent Jonathan Lagoa is the son of Ms. Villaronga. Petitioner claims the respondent lacks succession rights and terminated the license by service of a 10 Day Notice to Quit. Respondent interposed an answer stating a general denial and appears with benefit of counsel.

Testifying on behalf of petitioner is Elsa Rivera. Ms. Rivera's employer, POKO Partners, LLC, commenced managing the property when petitioner purchased the building in January of 2014. Ms. Rivera possesses 20 years of experience as a building manager. In this capacity, she monitors rents. Her job duties include screening applicants for HUD subsidized apartments as *2 well as overseeing yearly re-certifications of present subsidized tenants. Ms. Rivera received certification in the Tax Credit Compliance System which includes training to comply with HUD rules and regulations. She lacks personal knowledge of the recertification procedures for this complex prior to the time she became property manager. She visits the onsite office of this building about once a week.

The deed to the premises and the multiple dwelling registration were admitted into evidence without objection. The deed was executed on January 22, 2014. The

initial lease for the subject premises was admitted into evidence. The lease was signed in 2009 and lists both Norma Villaronga and the respondent, Jonathan Lagoa, as tenants, Ms. Rivera testified that the respondent was listed as a tenant because they were co-applicants for the premises. Ms. Rivera testified that the premises is subsidized through a HUD Section 8 program which requires annual recertification. Respondent participated in the recertification procedure through the 2011 recertification year. Mr. Lagoa signed a Vacated Family Member Affidavit on July 18, 2012. In the Affidavit respondent swears that he no longer resides at the subject premises and lives at 3146 Kingsbridge Terrace, PH, as of July 6, 2012. Ms. Rivera stated that he was removed as a co-tenant of the apartment in July of 2012 pursuant to the statement on the Affidavit. Since that time, he has not been recognized as an occupant of the premises because he was not listed as a household member in subsequent recertifications. Ms. Villaronga recertified on August 10, 2012. Ms. Villaronga is listed as the only person living in the premises. The effective date of the recertification was October 1, 2012. Ms. Villaronga recertified in 2013 and is the only person listed as a household member. This recertification is signed on June 13, 2013 and became effective October 1, 2013.

Ms. Rivera further testified that the superintendent informed her of the death of the *3 tenant, Ms. Villaronga. Ms. Rivera telephoned Ms. Villaronga's daughter who was listed as the emergency contact to verify the information received from the superintendent. The daughter informed Ms. Rivera that Ms. Villaronga had died and that her son, the Respondent, Jonathan Lagoa, resided in the apartment. Ms. Rivera stated that according to the HUD handbook only remaining family members were entitled to be considered for succession upon the death of the head of household. According to HUD rules, a remaining family member is defined as an occupant listed on the most recent income recertification. Ms. Rivera stated that according to the HUD handbook, Jonathan Lagoa could not be considered for tenancy because he was not listed as a household member of the time of Ms. Villaronga's death on April 9, 2014.

Respondent Jonathan Lagoa testified on his own behalf. He stated that prior to moving to New York City, he lived with his mother, her sister, her husband and their 3 children in Florida. He then moved to New York City and lived with an aunt. His mother moved to New York City in 2009. Upon her arrival, he and his mother looked for an apartment together. At that time, he was 18 years old. They found this 2 bedroom apartment and were found eligible to become co-tenants of the HUD Section 8 subsidized subject premises. The first lease was effective on Oct. 1, 2009 when Mr. Lagoa and Ms. Villaronga moved into the premises.

Respondent is familiar with the management office because it is where he and his mother submitted the initial application for an apartment. At the time he moved into the premises, Mr. Lagoa testified that he was not employed. Later, upon gaining employment in 2010, he reported his income at the management office. Respondent testified that his mother was sickly and frail. He assisted her with the activities of daily living. He performed such duties as grocery shopping and clothes washing. He also stated that they argued often. Respondent testified that his mother suffered from sleep apnea, *4 congestive heart failure and a bad back. She was often hospitalized or treated in the emergency room. When they argued, the conflict would result in them either not speaking to each other or respondent going for a walk.

In 2012 respondent testified he and his mother had a serious verbal altercation. His mother issued an ultimatum to respondent. His mother insisted he live elsewhere so she could have a quiet environment. Respondent stayed at a hotel for 2 nights then returned home. When he came home, he and his mother agreed that it would be best for him to find another place to live. Respondent states he abided by the HUB procedure when he submitted the Vacated Family Member Affidavit to the office notifying them that he had left the premises. However, Respondent stated that he submitted this notice prior to actually moving from the premises. Although it was his intent to move immediately, it took longer than expected because of his mother's worsening physical condition. When he left in 2012, he took a minimal amount of clothes with him and moved in with his sister, Rosario Lagoa. For several weeks, he had minimal contact with his mother.

His mother's condition progressively worsened to the extent that within 2 weeks of leaving the apartment, he returned to live in the apartment and assist with her health care. He reconciled with his mother and she consented to his remaining in the apartment. This is evidenced by the fact that on Sept. 8, 2012 his mother signed a notarized letter to Petitioner notifying them that Mr. Lagoa had returned to live in the premises and requesting that he be added to the lease. This letter was admitted into evidence over petition's objection. Mr. Lagoa testified that his sister wrote the letter and that he was present when his mother signed the letter in front of a notary. Respondent met with management when he delivered the letter. A person from the management office informed him that there was nothing further he needed to do in *5 order to be added to the household composition. However, he would not be officially listed on the household composition until the next annual recertification in 2013.

When it became time to recertify, Ms. Viallagro's condition had noticeably worsened requiring the recertification to take place in the premise. At the time of this recertification on June 13, 2013, Mr. **Lagoa** stated he was not present. It was some time later that Mr. **Lagoa** learned that his mother recertified and did not include him as a household member. Respondent believed that he would automatically be added at the time of the 2013 recertification. He did not seek to ascertain whether he was added to the 2013 recertification based upon his conversation with management at the time he submitted his mother's request in September of 2012 when they assured him that he would be added at the time of the 2013 recertification.

Respondent's mother, Ms. Villagro, died on April 9, 2014. Respondent testified that he used the subject premises as his address for mail and bills. He stated that he has lived continuously in the premises since July or August of 2012.

Rosario **Lagoa**, respondent's sister testified on his behalf. She visits her brother at the subject apartment. She described the apartment layout and the tenuous relationship between respondent Jonathan **Lagoa** and their mother. The problematic relationship resulted in Mr. **Lagoa** moving in with her for a brief time. Respondent lived with her for no longer than one month in 2012. She talked with her mother about Respondent's need to return home as Ms. Villaronga was losing her eyesight. Due to their mother's deteriorating health, Jonathan **Lagoa** returned to the subject apartment in late summer of 2012. It was Ms. **Lagoa** who brought Respondent's personal belongings back to her mother's apartment when Mr. **Lagoa** returned to the premises.

Rosario **Lagoa** testified that her relationship with her mother was a very close one. She visited her mother every day. She shopped for her, dressed her and picked up her medications. *6 She often checked the mailbox. There was mail addressed to her mother, as well as to the Respondent.

After Respondent returned home. Ms. **Lagoa** stated that the relationship between her mother and brother improved. Ms. **Lagoa** told her mother that the Respondent must be listed as a member of the household on the lease. In the summer of 2013, Ms. **Lagoa** spoke to Olga at the management office about the procedure to add Respondent to the household composition and lease. Ms. **Lagoa** was informed that the building was being sold and that her mother should wait to make the request again after the sale of the property to the new owners was final.

Carmen Rodriguez testified on behalf of Respondent, Ms. Rodriguez has been a tenant in the building for 38 years and has known the Respondent for several years because they live on the same floor. Ms. Rodriguez resides in Apt. 1L, the Respondent resides in Apt, 1K. When Ms. Villaronga was alive, Ms. Rodriguez and Ms. Villaronga would visit the tenant in Apt.1C. Ms. Rodriguez testified that Jonathan **Lagoa** often answered the door when she went to visit Ms. Villaronga. She described Ms. Villaronga as in very poor health. From January 2014 to her death in April 2014, she was unconscious, in bed and did not recognize anybody. Ms. Rodriguez would knock on the door almost every day to inquire as to whether Ms. Villaronga had regained consciousness. The Respondent and his sister were in the apartment caring for their mother. The entire family came to visit, but she only observed Respondent living with Ms. Villaronga.

DISCUSSION

The law is clear; succession is available to a family member in a privately owned building where the petitioner receives a HUD Section 8 subsidy. This right is derived from the federal law and the implementing regulations governing Section 8 benefits where a family is defined as all remaining family members. See, 42 USC §1437a (b)(3)(a) and 24 CFR Section *7 5.403(6). A remaining family member can succeed to the apartment upon a showing that the person resided continuously in the premises prior to the death of the tenant of record. *Amsterdam Ave. Housing Associates v. Estate of Wells*, 10 Misc. 3d 142(A), 814 N.Y.S.2d 893(App Term 2006).

The absence of respondent's name on recertification or family composition documents is not fatal to a claim of succession. See, *Matter of Manhattan Plaza Associates, L.P. v. Department of Housing Preservation and Development of City of New York*, 8 AD3d 11, 778 N.Y.S. 2d 164 (1st Dep't 2004); *2013 Amsterdam Ave. Housing Associates v. Estate of Wells*, 10 Misc. 3d 142(A), 814 N.Y.S.2d 893(App. Term 2006); *Bronx 361 Realty, LLC v. Quinones*, 26 Misc. 3d 1231(A), 907 N.Y.S.2d 98(Table), 2010 WL 761240 (N.Y. City Civ. Ct.), 2010 N.Y. Slip Op. 50334(U), *Upaca Site 7 Associates v. Crawford*, 12 Misc 3d 1154(A), 819 N.Y.S.2d 213, (Table), 2006 WL 1341018 (N.Y. City Civ. Ct.), 2006 N.Y. Slip Op. 50887(U). In order to determine whether Mr. **Lagoa** was a remaining family member, the court must determine whether respondent actually occupied the premises as part of the family unit at the time of his mother's death, not whether he was on the family composition form. (*Rivin Houses Associates v. Estate of Brown*, NYLJ, Sept. 20, 1991, at 21, col.2 [App Term 1st Dept]).

Federal law does not require a minimum period of co-occupancy with the tenant of record to establish a legitimate occupancy. In *NSA North Flatbush v. Mackie*, the court observed that courts have "placed more emphasis on the bona fides of the co-occupancy as opposed to an arbitrary time period" (166 Misc.2d at 451). Thus, while the length of respondent's co-occupancy with the tenant of record bears on the legitimacy of his occupancy as a member of the family unit, it is not dispositive of that central issue regarding succession.

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Petitioner argues that the lack of documentary evidence submitted by Respondent to support his position leads to the conclusion that he and his mother did not live together as a family unit. However, the court notes that a preponderance of credible personal testimony may overcome the absence of documentation in determining succession claims. *300 East 34th Street Co. v. Habeeb*, 248 A.D. 2d 50 [1st Dep't 1997]. Respondent and his sister, as well as the tenant of the neighboring apartment testified credibly that Respondent continuously resided in the apartment but for a brief period in late summer of 2012 when he lived elsewhere.

Respondent does have to prove he and his mother were a family unit. By definition they are just that. This is especially true here where he returned to the premises after a very brief stay elsewhere in order to care for his ailing mother. This is not, as Petitioner argues, a situation as in *Davidson v. Corbett*, 1190 Misc.3d 813 (App. Term 1st Dept. 2002). In *Corbett*, the Respondent was listed on the annual certification as the live-in home attendant to the tenant of record. The court denied succession in that case because HUD's regulations explicitly fail to recognize care workers as eligible for succession. Here, Respondent is a qualifying family member for purposes of succession. Respondent is only required to prove that he and his mother co-occupied the apartment. (see *2013 Amsterdam Avenue Housing Associates v. Wells*, 10 Misc.3d 142[A], 2006 N.Y.Slip Op. 50084[U] [App Term, 1st Dep't 2006] [absence of Respondent's name on the family composition not fatal to succession claim where remaining family member could show co-occupancy with the tenant of record] citing, *Matter of Manhattan Plaza Assocs., L.P. v. DHPD*, 8 AD3d 111[2004] [failure of son of deceased tenant to be listed on annual income and family composition did not preclude succession to Section 8 subsidy]). Petitioner's emphasis on Respondent's mother's failure to ensure that he be listed on the income recertification is misplaced and does not defeat the succession claim.

This is especially *9 true here where she was so ill at the time of the recertification that she was physically unable to go to the management office to recertify. It is not respondent's presence on the income certification that determines whether

succession rights are conferred. It is co-habitation of the family members. *Upaca Site 7 Assoc. V. Hunter-Crawford*, 12 Misc.3d 1154(A) (Civ. Ct. NY Co. 2006).

The evidence submitted is sufficient to conclude that Jonathan Logoa resided with Ms. Villaronga at the time of her death. Respondent proved by a preponderance of credible personal testimony and documentary evidence that he resided in the apartment with his mother since the inception of the tenancy but for a brief period no greater than a month to two months in 2012.

Accordingly, the petition is dismissed. Petitioner failed to establish respondent Jonathan Logoa was a licensee. Jonathan Logoa established that he is entitled to succession to the premises. A determination as to whether he qualifies for a HUD subsidy must be determined in accordance with HUD rules and regulations. This constitutes the decision and order of the court.

Dated: Bronx, N.Y.
March 3, 2015

Note to Parties:

Parties may recover their exhibits from Part B clerk in Room 360 on the third floor of 1118 Grand Concourse, Bronx, NY. If the exhibits are not picked up within 30 days, they may be disposed of in accordance with Administrative Directives.