

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

**MARY ANN HICKEY,**  
Petitioner,  
v.  
**BOROUGH OF PARK RIDGE,**  
**BERGEN COUNTY,**  
Respondent.

Decided February 7, 1983

**Initial Decision**

**SYNOPSIS**

Petitioner entered into an agreement for occupancy of a basement apartment in a zoning district designated for single-family occupancy. In 1982 the municipal construction official gave notice to the building's owner that rental occupancy of the premises was illegal under the zoning ordinance. Petitioner was then evicted from her premises and applied for relocation assistance under *N.J.A.C* 5:11-1.2.

The administrative law judge assigned to the case determined that petitioner had entered into a rental agreement which was contrary to a local zoning ordinance. The judge concluded that since petitioner's rental occupancy was unlawful under the Borough zoning ordinance, petitioner was not a lawful occupant under a program of zoning code enforcement within the meaning of *N.J.A.C* 5:11-1.2(a) and thus was not entitled to relocation assistance.

---

**Ben R. Cascio**, Esq., for petitioner (Edwards & Gallo, attorneys)

**Alexander H. Carver III**, Esq., for respondent (Scelza & Carver, attorneys)

---

**OSPENSON, ALJ:**

Having vacated her rental premises at 308 Park Avenue, Borough of Park Ridge, Bergen County, on June 12, 1982, in response to a notice to the owner from the municipal zoning officer of the Borough on May 19, 1982, to end an illegal rental in a single family residence zone, Mary Ann Hickey, petitioner, sought relocation assistance from the Borough under rights granted by New Jersey's Relocation Assistance Law, *N.J.S.A.* 52:31B-1 *et seq.*, and regulations promulgated

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

thereunder in *N.J.A.C.* 5:11-1.1 *et seq.* Assistance was denied. On October 19, 1982, the Bureau of Housing Services of the Department of Community Affairs informed the Borough that relocation assistance payments were required to be made by the Borough to petitioner under the circumstances. On November 2, 1982, the Borough requested a hearing on the determination by the Bureau of Housing Services. Accordingly, the Commissioner of the Department of Community Affairs transmitted the matter to the Office of Administrative Law on November 18, 1982, for hearing and determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

The issue is whether petitioner shall have established by a preponderance of the credible evidence her entitlement to relocation assistance at the hands of the Borough by reason of an alleged displacement from her rental premises on account of a lawful order or notice of the Borough for the purpose of zoning code enforcement within the meaning of *N.J.A.C.* 5:11-1.2, 2.1. It was stipulated by the parties that should relocation assistance be found payable, the relocation assistance payments would be as follows:

1. A fixed payment of \$300 for moving expenses and a \$200 dislocation allowance, pursuant to *N.J.A.C.* 5:11-3.5; and
2. Rental assistances payments not to exceed the amount of \$4,000 pursuant to *N.J.A.C.* 5:11-3.2.

#### *EVIDENCE AT HEARING*

It appeared without significant dispute that petitioner and her daughter, age 12 years, occupied a basement apartment in premises owned by Michelle Caria, in a single family bi-level house at 308 Park Avenue, Borough of Park Ridge, Bergen County, from on or about December 15, 1981 until June 12, 1982. The premises were in an "R-20" zone under the municipal zoning ordinance, which is limited to single family residence occupancy. The ordinance defines a single or one family dwelling as a building containing one dwelling unit only. A dwelling unit is defined as a building or a portion thereof used for living purposes by one family and having cooking and sanitary facilities for its exclusive use. The portion of the premises at 308 Park Avenue occupied by petitioner during the period in question was in the basement or recreation room area and consisted of a large room and an adjoining laundry room in which was located a kitchenette with gas stove and a lavatory. In the family room at one side were lockable sliding glass doors. Two other lockable doors separated the

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

family room and the laundry room areas from the rest of the house, which was occupied by Michelle Cambria and her family and which contained another, full-size kitchen and bathrooms.

On May 17, 1982, after local police were called to the premises to investigate a neighborhood disturbance, the rental/occupancy arrangement was reported by police to the Borough's construction code official as being in apparent violation of local zoning ordinances prohibiting rentals in a single family residence zone. On investigation by the construction code official on May 19, 1982, the owner, Michelle Cambria, was given official notice on that day that the property was being used for rental purposes and was in violation of local zoning ordinance restricting occupancy to single family residences. The owner was cautioned that her tenant must vacate the dwelling by June 18, 1982, to avoid legal action by order of the construction code official. Petitioner actually vacated the premises on about June 12, 1982, after Michelle Caria moved petitioner's belongings from the rental area. In the interim, it appeared generally, personal relations between petitioner and Cambria had deteriorated.

After petitioner's claim to the Borough for relocation assistance was denied, an investigation was conducted by the Chief of the Bureau of Housing Services of the Department of Community Affairs. In a letter to the Borough on October 19, 1982, Joseph G. Feinberg, Chief of the Bureau, informed the Borough that an investigation indicated petitioner's displacement was a result of the Borough's having cited the occupancy as an illegal rental arrangement violative of the Borough's zoning ordinance. The Borough was informed by the Bureau Chief that, under the circumstances, relocation assistance was payable to petitioner in accordance with statute and regulations in *N.J.A.C.* 5:11-2.1.

Evidence adduced by the Borough at hearing was directed principally at an effort to show there was no true landlord-tenant relationship between petitioner and Cambria. Cambria testified she first came to know petitioner after an introduction by Cambria's sister-in-law in December 1981. Petitioner was looking for an apartment for herself and her daughter. Because she felt sorry for petitioner, Cambria said, she permitted petitioner to move into the premises temporarily for the holiday season. Cambria denied she charged petitioner rent but insisted that the two agreed on payments merely to defray Cambria's utility costs. The amount agreed upon, according to Cambria, was \$150 every two weeks. These payments, Caria admitted, were made in a series of checks or money orders during the

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

period December 15, 1981 through May 15, 1982. Checks and money orders contained the notation on their faces "Rent." Cambria said she did not regard the payment as rent but made no objection to payments bearing that characterization and admitted she endorsed and negotiated each payment without objection. Petitioner, to the contrary, testified the payments were indeed for rent.

Cambria acknowledged receipt of the notice of unlawful occupancy from the construction code official on May 19. As a result of it, she said, she told petitioner she would have to leave within the week. When petitioner failed to do so, said Cambria, she, Cambria, took petitioner's belongings and moved them to the garage on or about June 12, 1982.

Petitioner testified that after she was displaced she had difficulty in locating other suitable or comparable rental premises in the area. She began looking for a one or two bedroom apartment that had a rental of no more than \$400 per month, which she said was all she was able to pay. Working through a series of local real estate brokers, and following leads of her own from local newspapers, petitioner said she was unable to find other accommodations until October 31, 1982. She obtained an apartment in a two family house, within the county, consisting of a kitchen, living room, two bedrooms, and bath, for which she pays \$448.00 plus utilities per month.

Testifying for petitioner, a licensed real estate salesperson employed by a local realtor in Wyckoff, Bergen County, said she worked with petitioner in attempting to relocate her in an accommodation comparable to 308 Park Avenue, which she described as equivalent to a studio apartment. The salesperson said there were no such comparable studio apartments available in the area at a rental of \$400 per month. The accommodation petitioner ultimately found, the salesperson said, was one petitioner was lucky to find and one which bore a probable economic rent or fair market value of between \$450 and \$500 per month. For a one bedroom apartment in the area consisting of one bedroom, kitchen, bath and living room, the salesperson said, the average rental in the area would be between \$500 or \$550 per month.

### *DISCUSSION*

The Borough's principal arguments against petitioner's claims for relocation assistance were: (1) that there was never any valid landlord/tenant relationship existent between petitioner and the owner of 308 Park Avenue; and (2) that even if there were such a relationship,

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

petitioner was nevertheless not entitled to relocation assistance since she was not a "lawful occupant" of the premises displaced by zoning code enforcement within the meaning of *N.J.A.C.* 5:11-2.1(a). That regulation provides as follows:

Whenever a State Agency or unit of local government undertakes a program of building code enforcement, housing code enforcement, health code enforcement or zoning code enforcement that causes the displacement of people, business or farm operations the said State Agency or unit of local government shall provide relocation payments and assistance to all lawful occupants who are displaced as provided in subchapters 3 and 4 of this chapter. . . .

The relationship of landlord and tenant may be created between two persons, although there has never been a writing nor any oral agreement between them expressly creating that relationship, by reason of conduct of the parties to each other. Periodical tenancies are those tenancies that run for a specific period and then renew themselves for a like period, indefinitely and until terminated by a proper notice to quit or some other appropriate act. Rent is the compensation paid, either in money, labor, produce or something similar, for the use of real estate. Rent is a species of incorporeal hereditament.

That the relationship between petitioner and Michelle Cambria here is that of landlord and tenant seems clear. Petitioner received the exclusive use of a portion of the premises for a recurring two week period, for which such exclusive use and occupancy she paid a bi-weekly compensation of \$150. Cambria's disavowal that such compensation was rent, or her assertion that petitioner's occupancy was a charitable gratuity offset merely by a sharing of utility expenses cannot outweigh the circumstances that petitioner's occupancy was exclusive, adverse and conditioned upon payment of the bi-weekly compensation that both parties were content to call rent. Indeed, the testimonial evidence showed the original letting was anything but a gratuitous act of charity; what seems far more likely is that Cambria, in need of income, decided to take the chance of renting part of her bilevel home to petitioner for \$300 a month, a probably attractive price to both parties in view of the fact such rental in a single-family residence zone was unlawful under the zoning ordinance.

On the question of whether petitioner's rental occupancy of the premises was "lawful" within the meaning of *N.J.A.C.* 5:11-1.2, however, it seems clear it was not; it was expressly violative of the

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

Borough's zoning ordinance restricting housing in an R-20 zone to single-family residences, that is, for living purposes by one family having cooking and sanitary facilities for its exclusive use. In *Moran v. Township of Randolph*, (N.J. App. Div., January 20, 1983, A 649-80T2) (unreported) certif. den., 94 *N.J.* 573 (1983) it appeared petitioner was a tenant of premises in a summer colony residential zone limited by ordinance annually to the period May to September 30. When petitioner did not vacate by October 1 and when zoning officials gave her notice to vacate because she was in violation of ordinance, she did so and claimed relocation assistance under *N.J.A.C.* 5:11-2.1. The Appellate Division stated:

Clearly petitioner is not entitled to relocation assistance. The tenancy here commenced and continued in direct violation of an existing law. It defies common sense to assert that the Legislature in *N.J.S.A.* 52:31B-1 intended to make a governmental unit pay displacement assistance where it seeks to send such a violation. We will not infer such an absurd intent on its part. . . . (slip opinion at 8).

### CONCLUSION

Based on the foregoing, and having heard the witnesses in testimony, I hereby **FIND** and **DECLARE** as follows:

1. The above discussion, to the extent of any mediate conclusions of fact, is adopted herein.
2. Mary Ann Hickey, petitioner herein, entered into a landlord/tenant relationship with Michelle Cambria on the basis of an oral tenancy of the basement apartment at 308 Park Avenue, Borough of Park Ridge, Bergen County, under a recurring periodic two-week tenancy for a rental of \$150. The tenancy began December 15, 1981.
3. Petitioner and her daughter occupied the premises from December 15, 1981 until June 12, 1982.
4. The premises are in a zoning district that is designated for single-family occupancy, which prohibits such tenancies.
5. On May 19, 1982, the municipal construction code official gave notice to petitioner's landlord that rental occupancy of the premises by petitioner was illegal under the zoning ordinance and subject to court sanction.
6. As a direct result of such notice and self-help evictive action by the landlord, petitioner was vacated and displaced from her premises at 308 Park Avenue, on June 12, 1982.

---

Hickey v. Park Ridge  
Cite as 5 *N.J.A.R.* 291

---

7. Because petitioner's rental occupancy was unlawful under the Borough's zoning ordinance, however, petitioner was not a lawful occupant displaced under a program of zoning code enforcement within the meaning of *N.J.A.C.* 5:11-1.2(a).

Accordingly, based on the foregoing, I hereby **CONCLUDE** that petitioner is not entitled to relocation assistance in the stipulated sums of \$300 for moving expenses and \$200 for dislocation allowance pursuant to *N.J.A.C.* 5:11-3.5. In addition, I **CONCLUDE** further petitioner is not entitled to rental assistance payments under *N.J.A.C.* 5:11-3.2. I **ORDER** entry of judgment in those terms in favor of the Borough of Park Ridge.

**After reviewing this Initial Decision,  
the Department of Community Affairs on  
February 7, 1983, issued the following Final Decision:**

Having reviewed the initial decision and any exceptions or replies submitted, I hereby adopt the decision of the administrative law judge in the above captioned case as the final decision.