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Haddock v. Passaic  
Cite as 10 *N.J.A.R.* 52

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**MARTA HADDOCK, CHRISTINE ADAMS,  
BRENDA BRINSON, ALICE ALLEN,  
SALLY HINTON, ARTIS HUDSON,  
TANYA NORMAN, GAIL ROBINSON,  
JULIA AGOSTA, BRENDA MORRISON,  
YVONNE MORRISSEY, LOUISE PICKETT  
and MARGARET SMALLEY,**

Petitioners,

v.

**DEPARTMENT OF COMMUNITY  
DEVELOPMENT, CITY OF PASSAIC,**  
Respondent.

Initial Decision: September 12, 1985

Final Agency Decision: October 16, 1985

Superior Court, Appellate Division Decision Appears at:  
217 *N.J. Super.* 592 (App. Div. 1987)

#### SYNOPSIS

The City of Passaic denied petitioners' request for relocation benefits. Petitioners alleged the denial was improper and the matter was transmitted to the Office of Administrative Law. During a prehearing conference, the parties agreed to submit the matter for summary decision to be based on briefs and stipulated facts.

Petitioners, tenants in three apartment buildings in Passaic, were being evicted pursuant to *N.J.S.A.* 2A:18-61,1(g) because their landlords had been cited for overcrowding. In all cases, more persons were living in the apartments than was permitted by the Property Maintenance Code of the City of Passaic.

The administrative law judge found that the petitioners were lawful tenants, the City of Passaic was the displacing agency and that petitioners were entitled to relocation assistance pursuant to *N.J.S.A.* 52:31B-2, *N.J.S.A.* 52:31B-4(a), *N.J.S.A.* 20:4-2, *N.J.A.C.* 5:11-2.1(a) and *N.J.A.C.* 5:11-2.3(a). Respondents had relied on an unreported Appellate Division decision wherein petitioner was deemed to be an unlawful occupant because the occupancy violated a zoning ordinance and, therefore, relocation assistance was denied. The administrative law judge held the unreported case was inapplicable because it involved a zoning ordinance, whereas *N.J.S.A.* 20:4-2 provides reloca-

tion assistance for persons displaced by building code enforcement activities.

Summary decision was granted to petitioners and the City of Passaic was ordered to provide relocation assistance in accordance with subchapters 3 and 4 of *N.J.A.C* 5:11. Upon review, this initial decision was adopted by the Department of Community Affairs.

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**Peggy Earisman**, Esq., for petitioners (Passaic County Legal Aid Society)

**John J. McKniff**, Esq., for respondent

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**YOUNG, ALJ:**

Petitioners alleged the denial of relocation benefits by the Department of Community Development, City of Passaic, (City) was improper and seek to have said action set aside. The City denies any improprieties and seeks dismissal of the matter.

The matter was transmitted as a contested case on June 26, 1985 to the Office of Administrative Law pursuant to *N.J.S.A.* 52:14F-1 *et seq.* A prehearing conference was held at the Office of Administrative Law, Newark, on July 26, 1985 at which the parties agreed to submit the matter for summary decision. Briefs were submitted and the record closed on August 30, 1985, the date established for the filing of optional replies.

The following facts, stipulated by the parties, are adopted herein as **FINDINGS OF FACT:**

1. The premises located at 113 Third Street, Passaic, New Jersey have been owned at all times relevant by Joseph Reiss and Harold Reiss trading as Strand Associates. The premises situated at 176 Third Street, Passaic, New Jersey have been owned by Joseph Reiss and Harold Reiss at all times relevant to this matter.
2. All of the petitioners who are tenants in the buildings owned by Joseph Reiss and Harold Reiss are month to month tenants.
3. The petitioners who are tenants in buildings owned by Joseph Reiss and Harold Reiss were summoned to the Landlord-Tenant Court of the County of Passaic wherein the initial proceedings were dismissed because of inadequate notice. The petitioners were subsequently summoned to the Land-

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lord-Tenant Court of Passaic County at which time stays of warrants for removal were granted pending the disposition of the above-captioned matter. The basis of these tenancy actions is *N.J.S.A.* 2A:18-61.1(g), a notice to vacate served on the tenants as a result of the service of a citation for overcrowding from the City to the landlord.

4. The following are the dates relative to the petitioners who are tenants of Joseph Reiss and Harold Reiss:  
April 16, 1985 request for relocation assistance made to the City of Passaic:  
April 29, 1985 request for relocation assistance denied:  
May 14, 1985 request for review by the State of New Jersey:  
May 31, 1985 the State of New Jersey denies the appeal:  
June 14, 1985 the petitioners file the within appeal.
5. Louise Pickett is a tenant in Apartment 9 at 113 Third Street, Passaic, New Jersey. She began occupancy of the premises in 1974. At the time she entered the premises she occupied the premises with six children thereby making the total number of people occupying the premises seven. The apartment consists of four rooms with a total square footage of 510 feet. Four people is the occupancy limit under the City Ordinance. Under that ordinance the apartment is deficient by 240 square feet for occupancy by seven people.
6. Christine Adams resides in Apartment 3 at 113 Third Street, Passaic, New Jersey. She began her occupancy of the premises in April of 1984. At the time she began occupying the premises the petitioner moved in with her husband and one child. While occupying the premises she gave birth to another child. The apartment consists of three rooms for a total of 359 square feet. The apartment is thereby deficient by a total of 91 square feet for occupancy by three people. While the square footage is sufficient for three people, there is sleeping area for only two under the Ordinance. The petitioner has since moved out. If the first child was under the age of one year at the time of moving into the apartment then the petitioner moved into the apartment legally.
7. Brenda Morrison occupies Apartment 1 at 176 Third Street, Passaic, New Jersey. At the time petitioner moved into the apartment over two years ago she occupied it with four children. At the present time the apartment is occupied by petitioner and three children. The apartment consists of three

rooms for a total floor area of 380 square feet. This results in a 70 square foot deficiency.

8. Yvonne Morrissey occupies Apartment 1 at 133 Third Street, Passaic, New Jersey. She moved into the apartment on March 9, 1984. At the time the petitioner moved into the apartment she occupied it with herself and four children. The apartment consists of three rooms with a total floor area of 359 square feet thereby creating a deficit of 191 square feet. Under the ordinance the apartment has space for three people but sleeping area for only two.
9. Brenda Brinson occupies Apartment 7 at 113 Third Street, Passaic, New Jersey. The petitioner moved into the apartment several years ago with herself and a newborn child and three children. The apartment consists of three rooms for a total floor area of 359 square feet, like the Morrissey apartment. There is a deficiency in both floor area and sleeping area.
10. Margaret Smalley occupies Apartment 2 at 113 Third Street, Passaic, New Jersey. She began occupying the apartment on September 4, 1982. At the time the petitioner moved in she occupied the apartment with her husband, four children and two grandchildren for a total of eight people. The apartment consists of three rooms with a total square footage of 359 square feet like the other apartments thereby causing a deficit of 191 square feet.
11. Artis Hudson occupied an apartment at 414 Monroe Street, Passaic, New Jersey also known as 53 Myrtle Avenue, Passaic, New Jersey. The petitioner moved into the apartment with two children approximately three years old for an occupancy by a total of three people. The apartment consists of two rooms for a total square footage of 264 square feet thereby resulting in an 86 square foot deficiency, two people being the maximum by the occupancy standards.
12. The premises located at 414 Monroe Street, Passaic, New Jersey also known as 53 Myrtle Avenue, Passaic, New Jersey is owned at all times relevant herein by Joseph Reiss and Harold Reiss.
13. The following dates are relevant to the appeal of Artis Hudson:  
May 14, 1985 request for relocation assistance made to the City of Passaic;

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May 28, 1985 request for relocation assistance denied by the City of Passaic;

June 10, 1985 request for review made to the State of New Jersey;

June 25, 1985 the State of New Jersey denies the appeal.

14. Frank Torres, Sr. is the owner at all times relevant herein of the property located at 403-405-407-409 Monroe Street, Passaic, New Jersey.
15. Tanya Norman is a tenant in Apartment 3C at 407 Monroe Street, Passaic, New Jersey. At the time she moved in, the petitioner occupied the apartment with herself, a newborn child plus two other children. At present the apartment is occupied by the petitioner with three children for a total of four people. The apartment consists of four rooms with a total square footage of 519 square feet. The apartment complies with the floor area but it is deficient in regard to the required sleeping area, which is sufficient for only two people. The petitioner has a lease for the apartment and at the time she entered into the lease the apartment was rented to four people under the lease.
16. Gail Robinson occupies apartment 3D at 409 Monroe Street, Passaic, New Jersey. She moved into the apartment in 1982 with herself and two children for a total occupancy of three people. At the present time the petitioner occupies the apartment with herself, three children and one male, for a total occupancy by five people. The apartment consists of four rooms for a total square foot area of 539 square feet. (Three people may legally occupy the apartment.) At the time the petitioner moved into the apartment she complied with the requirement.
17. Alice Allen occupies Apartment 1A at 403 Monroe Street, Passaic, New Jersey. She began her occupancy of the aforementioned apartment in September 1979. At the time the petitioner moved into the apartment she occupied it with herself, two children and five grandchildren for a total of eight. At the present time the apartment is occupied by eight people. The petitioner does not have a lease with the landlord. The apartment consists of four rooms for a total square footage of 477 square feet. This results in a deficiency of 73 square feet for occupancy for five people, *i.e.* four people

- would be in compliance. At present the petitioner has at least eight people residing in the apartment.
18. Sally Hinton occupies Apartment 1B at 405 Monroe Street, Passaic, New Jersey. She began her occupancy of the apartment in 1980. At the time the petitioner moved into the apartment she occupied it along with, two children and one other adult for a total of four people. At present the apartment is occupied by the petitioner with three children plus one female and one male occupant for a total occupancy of six people. At the time the petitioner moved into the apartment she entered into a lease for four people. The apartment consists of four rooms for a total square footage of 526 square feet. There is a deficit of 124 square feet in the required area.
  19. Marta Haddock occupies Apartment 1A at 407 Monroe Street, Passaic, New Jersey. She began occupancy of the apartment September 1983. At the time the petitioner moved into the apartment she occupied it with four children for a total of five people. The apartment consists of four rooms for a total of 529 square feet thereby creating a deficit of 121 square feet. The petitioner has a lease for five people. Four people is the legal limit.
  20. Julia Agosta occupies the apartment 1B at 409 Monroe Street, Passaic, New Jersey. She began occupancy of the apartment in 1982. At the time the petitioner moved into the apartment she occupied it with four children for a total occupancy by five people. The apartment consists of four rooms for a total square footage of 475 square feet thereby creating a deficit of 75 square feet. The petitioner has a lease with the landlord for five people. Again, four people is the legal limit.
  21. The following dates are relevant to the petitioners who are tenants in the building owned by Frank Torres, Sr.:  
May 10, 1985 and May 14, 1985 requests made for relocation assistance to the City of Passaic;  
May 28, 1985 requests for relocation assistance are denied by the City of Passaic;  
June 10, 1985 an appeal made to the State of New Jersey;  
June 25, 1985 the State of New Jersey denies the appeal.
  22. There are presently pending summary dispossess actions against all of the petitioners in the Sepcial Civil Part of the

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Superior Court Law Division, Passaic County. As of August 1, 1985 judgments of possession were entered against all the tenants of Frank Torres, Sr., under *N.J.S.A.* 2A:18-61.1(g) in that he was cited by the City of Passaic for overcrowded apartments and he subsequently served notices to quit on all the tenants based on receipt of the City's notice. The warrants have been stayed pending a determination in this matter.

23. The Property Maintenance Code of the City of Passaic was passed in March of 1973 and notice of its passage was published March 19, 1973 and it is therefore in conformity with statute. The Property Maintenance Code became operative within the City of Passaic twenty days after March 19, 1973.
24. The relevant amendment to the Property Maintenance Code was made by Ordinance 795-84 which was adopted on August 9, 1984 and became effective within the City of Passaic twenty days thereafter. The City of Passaic did not enforce the Ordinance until September 1, 1984.
25. The pertinent amendment to the Property Maintenance Code changes the sleeping area requirements. The change was made from 140 square feet for two people to sleep to 130 square feet for two people to sleep.
26. The petitioners had no knowledge of the provisions of the Property Maintenance Code of the City of Passaic or any amendments or supplements thereto. This stipulation of facts entered into by the parties refers only to the petitioners named herein and not to any of the landlords or any other person, corporation or entity that is not a party to this action.
27. The requirements that caused the notice to the respective landlords was not contained in any Zoning Ordinance of the City of Passaic but was found merely in the Property Maintenance Code of the City of Passaic.
28. All of the structures occupied by the petitioners are legal uses under the Zoning Ordinances of the City of Passaic and possess valid certificates of occupancy for a permitted use.
29. The violation notices were issued to the landlords as a result of landlord compliance with Ordinance 162-72 as amended in 1984.

The "Relocation Assistance Law of 1967" is codified under *N.J.S.A.* 52:31 B-1 *et seq.*, and became effective May 31, 1967.

*N.J.S.A.* 52:31B-2 states:

This act being deemed and hereby declared necessary for the protection of the health and welfare of the residents of this State in order to assure the uniform, fair and equitable relocation of persons, businesses and nonprofit organizations displaced by State and local activities, programs or projects, shall be liberally construed to effectuate the purposes and intent thereof.

*N.J.S.A.* 52:31B-3 defines displaced at (e) as follows:

The term 'displaced' shall mean required to vacate any real property, or any tenancy therein, pursuant to any lawful order or notice of any State agency or unit of local government on account of the acquisition of any real property for public use, or on account of a program of law enforcement, or on account of a program or project for the voluntary rehabilitation of dwelling units.

*N.J.S.A.* 52:31B-4 states at (a):

Whenever any . . . unit of local government displaces, or causes to be displaced, any person . . . from any real property . . . on account of a program of law enforcement, . . . any such . . . unit of local government shall make fair and reasonable relocation assistance payments to any such displaced person . . . as herein-after provided in this section.

The "Relocation Assistance Act" was effective January 1, 1972 and is codified under *N.J.S.A.* 20:4-1 *et seq.*

The declaration of Legislative policy was embodied in *N.J.S.A.* 20:4-2, which states:

The purpose of this act is to establish a uniform policy for the fair and equitable treatment of persons displaced . . . by building code enforcement activities, . . . or other improvements conducted pursuant to governmental supervision. . . .

The authority of the Commissioner of the Department of Community Affairs to adopt and prescribe rules and regulations consistent with the provisions of the act are embodied in *N.J.S.A.* 20:4-10.

*N.J.A.C.* 5:11-2.1 states at (a):

Whenever a . . . unit of local government undertakes a program of building code enforcement, housing code enforcement or health code enforcement that causes the displacement of people, . . . the said . . . 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. . . .

It is stipulated that the displacement of petitioners herein is the result of the enforcement by the City of its Property Maintenance Code and subsequent amendments due to inadequate square footage

in living areas or inadequate sleeping areas (or both) for the number of occupants in each dwelling unit.

It is also stipulated that the occupied dwelling units were leased to the tenants without their knowledge of occupancy limitations, but no such stipulation was made concerning said knowledge of lessor-owners.

It is further stipulated that judgments of possession were entered against petitioners in Passaic County Superior Court, Law Division pursuant to *N.J.S.A.* 2A:18-61.1(b) with warrants stayed pending a determination of the instant matter.

*N.J.S.A.* 2A:18-61.1 states:

No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the county district court or the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant, except upon establishment of one of the following grounds as good cause:

- ...
- g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a re-development or land clearance plan in a blighted area. In those

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cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L. 1967 c. 79 (C. 52:31B-1 *et seq.*) and P.L. 1971, c. 362 (C. 20:4-1 *et seq.*) have been complied with;

...

It is unclear whether warrants for possession were issued pursuant to g(2) or g(3) of the above cited statute. Nevertheless, *N.J.A.C.* 5:11-2.3 makes no distinction, wherein it states at (a):

Whenever an eviction is sought under the provisions of *N.J.S.A.* 2A:18-61.1(g) by an owner, whether said owner is a person, State Agency or unit of local government, the tenant *shall* be provided with the relocation payments and benefits as provided in subchapters 3 and 4 of this chapter. . . . (emphasis added)

The gravamen of this dispute would appear to be whether petitioners are lawful occupants entitled to relocation benefits or excluded from such benefits because they are unlawful occupants.

Petitioners rely on *McNally v. Ruddletown Township*, 182 *N.J. Super* 622 (App. Div. 1982), wherein residents were forced to vacate after the buildings were found to be unfit for human habitation; *Rowe v. Pittsgrove Township*, 153 *N.J. Super* 274 (Law Div. 1977), rev'd on other grounds, 172 *N.J. Super* 209 (App. Div. 1980), wherein residents were evicted because the building lacked toilets and running water; *Department of Community Affairs v. St. Jude's Boarding Home*, 2 *N.J.A.R.* 432 (1981), wherein the Home was ordered closed due to hazardous code violations; and also *McCauley v. Township of Pennington*, 1 *N.J.A.R.* 351 (1980), wherein petitioner was evicted pursuant to *N.J.S.A.* 2A:18-61.1(g). Relocation assistance was granted in all the cited cases.

The City relies on *Moran v. Township of Randolph*, an unreported Appellate Division decision on January 20, 1983, wherein petitioner was found in violation of a zoning ordinance which prohibited occupancy of the premises between October 1 and April 30, and deemed to be an unlawful occupant and denied relocation assistance.

I **FIND** *Moran* distinguishable from the instant matter as well as the cases cited by petitioners. *Moran* was held in violation of a zoning ordinance with an inapplicability of *N.J.S.A.* 20:4-1 *et seq.*

There is no evidence in the instant matter that lessor-owners did not welcome the occupancy of petitioners and accepted rentals from the leasees with no intent to seek their evictions until the City cited them (lessor-owners) for overcrowding pursuant to the Property Maintenance Code.

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A review of the record in this matter, the applicable statutes, regulations, and decisional law, after consideration of the arguments of the parties herein, necessitates the following **FINDINGS OF FACTS**:

1. The City of Passaic is the displacing agency.
2. Pursuant to *N.J.S.A.* 52:31B-2, *N.J.S.A.* 52:31B-4(a), *N.J.S.A.* 20:4-2, *N.J.A.C.* 5:11-2.1(a), and *N.J.A.C.* 5:11-2.3(a) petitioners are entitled to relocation assistance to be provided by the City of Passaic.

I **CONCLUDE** that Summary Decision is **GRANTED** to petitioners and **DENIED** the City of Passaic.

The City of Passaic is hereby **ORDERED** to provide relocation assistance to petitioners in accordance with subchapters 3 and 4 of *N.J.A.C.* 5:11.

I hereby **FILE** my Initial Decision with **JOHN RENNA** for consideration.

**FINAL DECISION BY THE DEPARTMENT OF COMMUNITY AFFAIRS**

Having review 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.

I hereby direct that there be full compliance with final decision within 30 days of respondent's receipt thereof.

**You must check the New Jersey Citation Tracker in the companion loose leaf volume to determine the history of this case in the New Jersey courts.**