CASE NO. 11-19704 CA 08

IN THE CIRCUIT COURT FOR THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 11-19704 CA 08

MIAMI-DADE COUNTY,

Plaintiff,

v.

DAVID WATTS, and all Others in Possession,

Defendants.

_____/

GENERAL MAGISTRATE'S REPORT AND RECOMMENDATION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This Cause came on for hearing on February 22, 2016, and for a status conference on March 31, 2016, on Defendant, David Watts', Motion for Summary Judgment as to Count I of Plaintiff, Miami-Dade County's ("County"), Complaint and the County's February 16, 2016, Response in Opposition; and (b) the County's January 27, 2016, Second Motion for Summary Judgment, and Mr. Watts' February 16, 2016, Response, and the Magistrate, having heard argument of counsel and having reviewed the summary judgment evidence of record and the file herein and being otherwise advised in the premises, it is

FOUND AND RECOMMENDED as follows:

1. The County is a public housing landlord and administers its public housing programs through the Miami-Dade Public Housing Agency. The Agency's Admission and Continued Occupancy Policy and its leases with public housing tenants both require the Agency's written approval of any addition to the household of a tenant of record.

2. Ms. Gwendolyn Ephord was an authorized tenant of the County's Liberty Square Apartments ("Liberty Square") located at 6212 NW 14th Avenue, Miami, Florida, 33147 (the "Apartment"), part of the County's Public Housing Community Development Public Housing Program. For some time prior to November 1998, Ms. Ephord resided in her three bedroom Apartment with her children and, three months prior to her marriage to Mr. Watts on November 18, 1998, Mr. Watts moved into the Apartment. It was not until Ms. Ephord's death that Mr. Watts learned for the first time that his name was not on the Apartment lease even though he had continuously lived there for twelve years. Approximately a year and a month following Ms. Ephord's death, the County sent Ms. Ephord its April 19, 2011, 30-Day Notice to Resident of Opportunity to Cure Non-Compliance and Notice of Terminating Lease if Non-Compliance is not Cured ("30-Day Notice"). The County sought to terminate Ms. Ephord's lease on the sole ground that Mr. Watts was an unauthorized boarder in her Apartment.

3. For reasons which remain unexplained and can never be determined, Ms. Ephord did

not seek the Agency's approval to add Mr. Watts as a family member and she never disclosed his occupancy in her Apartment on any of her annual recertification interviews or forms. Because Ms. Ephord never sought its authorization or disclosed Mr. Watts' occupancy, the Agency's records did not indicate Mr. Watts' residence in the Apartment and, therefore, the County claims it had no knowledge of his twelve-year co-occupancy of the Apartment.

4. Both sides agree that there are no disputed facts and that their motions present an issue of law. Both sides also agree that this action presents a case of first impression under Florida law whether a spouse, who resided continuously over twelve years with his tenant-of-record spouse, has the right or privilege to continue to occupy a public housing unit as a remaining family member, defined in Title 42 U.S.C. Sec. 1437a(b)(3), even though his name was not identified on his wife's lease, his wife never made an application to add him to her family, and his wife never disclosed his co-occupancy during any of her annual recertification interviews.

5. Mr. Watts is disabled, indigent, and illiterate. There is no dispute that the Apartment has been and remains his only residence since 1998, and his income was consistent with eligibility for public housing assistance. There was no evidence that Mr. Watts would not ordinarily have been entitled to remaining family member occupancy and there was no evidence that he was an interloper seeking to continue his occupancy for

the purpose of acquiring tenant rights to which he otherwise would not be entitled. The County's only objection to the continuation of Mr. Watts' twelve year tenancy was his wife's failure to seek written permission to add him as a member of her family and her failure to identify him on her annual recertification interviews from the date of her marriage in 1998 until her death in October 2010.

6. The County's June 24, 2011, Complaint sued Mr. Watts in two counts, ejectment, to evict Mr. Watts and regain possession of Apartment, and quantum meruit, to recover the fair market rental value for the duration of his unauthorized tenancy. The County argued that Ms. Ephord violated her public housing lease agreements[1] because she never initiated the formal written process, which includes an unwaivable formal requirement for background screening, to add Mr. Watts to her lease. Although not pled or addressed in the summary judgment evidence, the County also argued that the evidence is consistent with a deliberate effort on the part of Ms. Ephord to mislead the County because she withheld the disclosure of her marriage and Mr. Watts' occupancy from each of her annual eligibility recertification interviews from 1999

[1]Ms. Ephord's most recent renewal of the lease for her Liberty Square Apartment was April 8, 2010, as indicated in the Notice of Rent Adjustment, signed by Mr. Telfort and attached as Ex. A to Mr. Watts' Response. This Notice, signed by Ms. Ephord, indicated the "Present Family Composition" as one adult and no minors. The line for "Signature of Spouse/Co-tenant" was blank.

through 2010.[2] Because the recertification interviews were completed under penalty of perjury, the County argued that Ms. Ephord's recertification records could be construed as the equivalent of an admission against Ms. Ephord's interest which would extend to Mr. Watts as her successor in interest.

7. In his Answer and Affirmative Defenses, Mr. Watts claimed entitlement to remaining family member status with a right to succession to Ms. Ephord's Apartment, or, alternatively, claimed that the County had waived its right to object to his continued residence. Mr. Watts' also defended the County's action on the basis that its eviction would be at best an abuse of its direction or at worst would result in an unconscionable, inequitable and unjust forfeiture. Mr. Watts based his right to succession to his late wife's lease agreement upon §42 USC 1437 (a)(b)(3), and the opinions of the New York appellate and division courts and a Connecticut superior court which upheld a right to succession to Section 8 federally subsidized housing programs for remaining family members.[2]

---

[2]On April 30, 2014, the County filed 91 pages of Ms. Ephord's1999 through 2010 recertification interview records in support of its summary judgment motion.

[2]Although not plead, the County also argued that Mr. Watts' plea of guilty to one count of third degree battery/felony on March 13, 2014, in Case No. F13-028796 for an incident which occurred on near Liberty Square on December 9, 2013, somehow renders him unqualified to occupy pubic housing. However, for the reasons explained on the record, the GM finds that Mr. Watts' plea three years following Ms. Ephord's death and during the pendency of this action raises an issue that was alleged in the County's Complaint. For this reason, the GM will not consider this ground to support the County's Motion and its opposition to Mr. Watts' Motion. *See Wilson v. Stone*, 172 So.3d 559 (Fla. 3d DCA 2015)("[T]he law is well settled that, on a

8. At all times material to this dispute, Mr. Watts identified the Apartment as his address with the County for receipt of food stamps, with the Florida Department of Health, with the Florida Department of Children and Families and with the Social Security administration for receipt of his Social Security disability income payments and medicaid benefits. Because he cannot read, Mr. Watts testified that relied upon his wife to handle all matters related to paperwork, including the paperwork for the lease. Mr. Watts recalled that his wife paid the rent and that sometimes she received a rent receipt. Mr. Watts' deposition testimony was clear and consistent that his wife "kept up all that stuff" that related to the Apartment lease and rent. Mr. Watts testified that he did not learn that his name was not on the Apartment lease until shortly following his wife's death, when her sister informed him that only his wife's name was on the Apartment lease. Mr. Watts' testimony on these material facts was not challenged by the County and remains unrebutted.

9. According to Mr. Watts, his marriage to Ms. Ephord and their shared residence were common knowledge not only to their Liberty Square neighbors and the Liberty Square Resident Council, but also to the Liberty Square management office. For example, Mr. Watts argued that his daily labor cleaning the grounds in exchange for public housing rent credits and his active membership in the Council made the Council and

---

motion for summary judgment, the trial court considers only the issues raised in the pleadings.").

the Liberty Square management office aware of his continued residence with Ms. Ephord in the Apartment. Mr. Watts also suggested that because a minimum number of three people is required for a three bedroom public housing unit, the County must have been aware of his presence when it renewed Ms. Ephord's lease multiple times.

10. County employee Phillip Alexander, a maintenance supervisor, testified that he saw Mr. Watts and Ms. Ephord picking up paper for rent credits in 2006. Mr. Alexander also testified that he saw Mr. Watts at the Apartment before Ms. Ephord died and that he spoke with him whenever they saw each other at the complex. Although he could not recall a specific instance when he was at the Apartment, Mr. Alexander testified that he went to the Apartment many times. Mr. Alexander assumed Mr. Watts and Ms. Ephord were married because he saw them together in the Apartment when he would go in and inspect to see what needed to be done, usually repairs to a refrigerator, stove, leaks, or toilet and repairs of that type. County maintenance employee Moise Joseph also recalled entering the Apartment to make repairs and speaking with Ms. Ephord and Mr. Watts together.

11. Eric Thompson, a Liberty Square Resident Council supervisor, testified that he first saw Mr. Watts in November 1999 when Mr. Thompson started to work at Liberty Square. Mr. Thompson recalled that Mr. Watts and Ms. Ephord were the first volunteers he met when he came to work at Liberty Square. Mr. Thompson described

Mr. Watts and his wife as "full time volunteers," up early five days a week to clean up the neighborhood.

12. Sara Smith, a long-time Liberty Square resident and President of the Resident Council, testified that Mr. Watts and Ms. Ephord had been community volunteers since the late 1990s picking up trash and cleaning up the community. According to Ms. Smith, Mr. Watts and Ms. Ephord always helped out in the community, worked every election there was, and were closely knit together. Ms. Smith testified that Mr. Watts and his wife would wake her up like a time clock at 5:00 a.m. in the morning cleaning up people's yards and picking up trash.

13. In support of ejectment and in opposition to Mr. Watts' summary judgment motion, the County relied primarily upon the testimony of Henri Telfort, the Agency's Property Site Manager. According to Mr. Telfort, the Agency had no record that Ms. Ephord applied for approval to add Mr. Watts as an occupant or that she ever identified him during any of her recertification interviews. Mr. Telfort could not remember seeing Mr. Watts and Ms. Ephord together, although he used to see Mr. Watts at Liberty Square "walking down the street." In contrast to his inability to remember whether he saw Mr. Watts and his wife together, Mr. Telfort's testimony about the Liberty Square rent credit program was more specific. According to Mr. Telfort, although Liberty Square is "a big place," only four or five people other than

Ms. Ephord participated in the rent credit program. According to Mr. Telfort, those people only picked up trash and garbage and papers at Liberty Square to tidy things up from three to five days a week for just thirty to forty minutes at a time. Although the County does not dispute that Mr. Watts and Ms. Ephord worked together to clean the Liberty Square grounds, Mr. Telfort could not recall having seen them together as two of the four or five or six participants that picked up the trash and garbage and papers in this big place in return for rent credits over many years. Mr. Telfort testified that he would have evicted Mr. Watts as an illegal boarder if he knew Mr. Watts was living illegal in the unit. However, Mr. Telfort also testified that he didn't know the guy (Mr. Watts).

14. Betty Jones testified that only tenants could perform work for rent credits and we[3] wouldn't have a non-tenant performing it. In contrast, Belinda Adams testified that although only a resident could sign up for rent credits, fifty people could do it, including grandkids, since the rent credit was only provided per household. Both Ms. Jones and Ms. Adams testified in general terms and neither witness could recall the Liberty Square tenants who participated in the rent credit program and who did the qualifying work on the Liberty Square grounds, although there was one record related to a rent credit for Ms. Ephord's Apartment in 2003, seven years prior to her death.

[3]From the excerpt provided of Ms. Jones' deposition testimony, the "we" could refer to Liberty Square or the Agency or the County, or all three.

15. Summary judgment may only be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Volusia Country v. Aberdeen at Ormond Beach, L. P.*, 760 So. 2d 126, 130 (Fla. 2006). If the evidence raises any doubt on an issue of material fact, or is such as will permit different reasonable inferences bearing on the existence of such an issue, summary judgment is not proper. *First Mortgage Investors v. Boulevard National Bank of Miami,* 327 So. 2d 830, 832 (Fla. 3d DCA 1976). "On a motion for summary judgment, the moving party bears the burden to show the nonexistence of any disputed issues of material fact." *Delandro v. Am's. Mortg. Servicing, Inc.,* 674 So. 2d 184, 186 (Fla. 3d DCA 1996). "Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC, Inc.*, 28 So. 3d 235, 237 (Fla. 4th DCA 2010).

16. At the time of the hearing, both sides agreed on the record that their cross-motions presented a legal issue and that there were no facts in dispute. The GM relied upon the summary judgment evidence of record which included Mr. Watts' deposition and excerpts of the depositions of Mr. Mr. Alexander, Ms. Joseph, Mr. Thompson, and Ms. Smith. The County only provided excerpts of the deposition testimony of its witnesses, Mr. Telfort, Ms. Jones and Ms. Adams, and not complete deposition transcripts.

17. The GM's July 10, 2014, Report and Recommendation denied the County's first Motion for Summary Judgment, in part, based upon a finding that neither side provided any guidance as to whether the County's public housing rules and regulations are in any way similar to or guided by the federal Section 8 housing statutes and HUD regulations. In support of and in opposition to the summary judgment motions, both sides relied upon decisions of the New York appellate, division and trial courts on petitions by unauthorized tenants seeking successor status for public housing units. Each of the New York courts' decisions interpreted New York City Housing Authority rules and regulations and the applicable federal rules and regulations governing public housing occupancy.[4] Each of the decisions turned on the specific facts presented and there is not one bright line rule applicable across all cases. The GM finds that the decisions of the New York courts on petitions for remaining family member status which interpret and construe state and local public housing rules and regulations and manuals in the context of equivalent federal pubic housing statutes and regulations are persuasive.

18. In support of its renewed summary judgment motion, the County again relied upon

---

[4]The decisions of the New York courts on petitions seeking remaining family member status take into consideration federal statutes and HUD's implementing federal regulations governing federally subsidized project-based housing. See 42 USC 1437a(b)(3)(A), HUD Handbook 4010.1-28, 24 CFR 5.4034, and HUD Public Housing Occupancy Guidebook, Part 4, Chapter 12.1 and 12.3.

its Agency's Policy and Ms. Ephord's April 8, 2010, Lease Agreement. The GM finds that Article VI, Reexaminations and Determination of Eligibility of the April 8, 2010 Lease Agreement states that the eligibility to continue occupancy is determined "[i]n accordance with federal regulations." The Agency's Policy at Section J, 1. Denial of Assistance of County's Admissions & Continued Occupancy Policy provides for Eviction or Termination from "Federally Assisted Housing." Indeed, incorporation of "HUD" requirements and "federally assisted housing" standards appear throughout the Agency's Policy.

19. State and local government public housing rules and regulations providing for succession rights to remaining family members serve the important remedial purpose of tempering harsh consequences due to the death or departure of the head of household and preventing dislocation of long-term residents. *Murphy v. New York State Div. of Housing and Community*, 21 N.Y.3d 649, 653 (2013). The federal regulatory scheme for succession to project-based Section 8 housing does not mandate any procedure with respect to eviction of successor tenants. Instead, the touchstone of succession to Section 8 tenancy is the legitimacy of the petitioner's occupancy as a member of the family unit at the time of the tenant of record's death and not the accuracy of one or more HUD forms. *See Bronx 361 Realty, L.L.C. v. Quinones,* 26 Misc. 3d 1231(A), 907 N.Y.S.2d 98, 2010 WL 761240 at *1-2 (N.Y. City Civ. Ct.

Mar. 5, 2010)(unpublished opinion)("Section 8 guarantees continued protection to every legitimate member of the family unit in occupancy. It recognizes that no such family member should suffer eviction, dislocation and homelessness upon the death of the tenant of record. It is thus consistent with the original ameliorative purpose of the United States Housing Act of 1937, the comprehensive legislation of which Section 8 forms a part."). See also *Winn Management Company v Szyjka,* No. 960546856, 1996 WL 727332 (Conn. Super. 1996)(unpublished opinion); and *NSA North Flatbush Associates v. Mackie,* 632 N.Y.S.2d 388, 391-92 (N.Y. City Civ. Ct. Jul. 10, 1995)("[N]o one factor is completely determinative with regard to whether a relative may succeed to the rights of a Section 8 tenant...What is dispositive is whether the respondent can make a showing, under the totality of the circumstances, that he lived with the deceased Section 8 tenant as a family unit, and that it was for more than a short period of time.")

20. In support of summary judgment, the County relied primarily upon the holding in *McFarlane v. New York City Housing Authority*, 9 A.D.3d 289, 780 N.Y.S.2d 135 (2004). In *McFarlane*, the appellate court affirmed the Authority's denial of the petitioner grandchildren's request for remaining family member status. Because the petitioner grandchildren offered no evidence that the Authority was aware of their presence in the unit, the court held that their grandparents' failure to obtain written

permission from the Authority to make the grandchildren permanent members of the tenant family operated as an absolute bar to the grandchildren's successor rights. In reaching this conclusion, the *McFarlane* court found that the grandchildren's petition was barred by operation of 24 CFR 966.4(a)(1)(v). Because the grandparents did not make a request to add their grandchildren as family members, there was no notice to the Authority that the grandchildren resided in the unit prior to the grandparents' deaths. Applying contract principles, the *McFarlane* court enforced the notice provision of the public housing lease.

21. The GM finds it significant that the New York appellate and division decisions on successor tenancy since *McFarlane* have held that the failure to list a family member occupant on a lease or income certification/affidavit was not fatal to remaining family member status but was only one factor for consideration of a petition for continued occupancy following the death of the head-of-household tenant of record. Indeed, the cases interpreting *McFarlane* since 2004 have focused upon that part of the opinion which holds that a showing that the housing authority was aware that a successor petitioner took up residence in the unit and implicitly approved it by not taking preventive action against the occupancy could be an acceptable alternative for compliance with the notice and consent requirements. Indeed, this part of the holding

has come to be known as "the *McFarlane* rule."[5] *See Russo v New York City Housing Authority*, 986 N.Y.S.2d 800, 807 and 812-13 (2014)(holding that a remaining family member may be relieved of the written consent requirement if the housing was aware of the applicant's co-occupancy of the apartment with the tenant and implicitly approved of the occupancy); *Murphy v. New York State Div. of Housing and Community*, 21 N.Y.3d at 653; and *Matter of Gutierrez v. Rhea*, 105 A.D. 481, 964 N.Y.S.2d 1(2013), lv. denied, 21 N.Y.3d 861, 971 N.Y.S.2d 751, 994 N.E.2d 842.

22. Mr. Watts relied primarily upon the holding in *Russo v. New York City Housing Authority*, 986 N.Y.S.2d 800 (N.Y. Supreme May 19, 2014).[6] In *Russo*, the court ruled that the housing agency's consent requirement set forth in its management manual was a creature of the agency and was not a mandate of federal law. The *Russo* court held that federal regulations do not require that a request be made and

---

[5]The GM finds the County's reliance upon the holding in *Carmona v New York City Housing Authority*, 134 A.D.3d 404 (2015) is also distinguishable on its facts from Mr. Watts' circumstances. In *Carmona*, the petitioning grandchild's evidence that he was an original family member was held to be insufficient.

[6]Although dicta, the *Russo* opinion opens with this remark relevant to the current dispute:

> If one were to identify cases illustrative of New York City Housing Authority (NYCHA) policies and procedures that cry out for change, this case would be at the top of the list. Front and center is the highly unusual requirement that a husband must obtain formal written permission from NYCHA before his wife can move in with him - a requirement that the average married couple could and would never anticipate.

granted in writing at least one year before the tenant dies or vacates in order for a remaining family member to stay in the apartment. *Russo*, 986 N.Y.S.2d at 810. Relying upon the holding in *Murphy v. New York State Div. of Housing and Community Renewal*, 21 N.Y.3d at 655, the *Russo* court held that a spouse's technical noncompliance with a housing agency's succession rules should not bar an otherwise meritorious claim and that courts must still consider the totality of the circumstances, including mitigating factors.[7] *Russo v. New York City Housing Authority*, 986 N.Y.S.2d at 811-12.

23. As explained in *Russo*, when faced with a request for remaining family member succession to a housing unit, the housing agency

> should consider each case on its own unique set of facts to determine whether the particular facts and circumstances justify relieving the tenant of strict compliance with the literal terms of each and every succession requirement. The rules must be applied in a manner consistent with the spirit of the law and the public policy, supporting succession rights, the true and complete facts presented, and the realities of everyday life....
>
> Rather, succession policies should be applied in keeping with their "remedial purpose": 'Succession is in the spirit of the statutory scheme, whose goal is to facilitate the availability of affordable housing for low-income residents and

---

[7]*See also Los Tres Unidos Associates, LP v. Colon*, 45 Misc.3d 129(A), 3 N.Y.S.3d 285 (Table), 2014 WL 5710782, 2014 NY. Slip. Op. 51566(U)(N. Y. Supreme, Nov. 3, 2014); *Bronx 361 Realty, L.L.C. v. Quinones,* 26 Misc. 3d 1231(A), 907 N.Y.S.2d 98, 2010 WL 761240 at *1-2 (N.Y. City Civ. Ct. Mar. 5, 2010)(unpublished opinion); *Upaca Site 7 Associates v. Hunter-Crawford,* 12 Misc. 3d 1154(A), 819 N.Y.S.2d 213 (2006), 2006 WL 1341018 at *2 (N.Y. City Civ. Ct. Apr. 4, 2006); and *2013 Amsterdam Avenue Housing Associates v. Estate of Wells,* 814 N.Y.S.2d 893, 2006 WL 1341018 at *2 (N.Y. City Civ. Ct. Apr. 4, 2006).

to temper the harsh consequences of the death or departure of a tenant for their traditional' and on-traditional" family members. *Id.* at 815, citing *Murphy*, 21 N.Y.3d at 653.

24. The GM finds that Mr. Watts' circumstances are similar to those of the petitioner son seeking successor occupancy as a remaining family member to his mother's public housing unit in *Murphy v. New York State Div. of Housing and Community*, 21 N.Y.3d 649, 653 (2013). In *Murphy*, the evidence of the petitioner son's primary residence was overwhelming and, as here, where there was no relationship between his mother's failure to file the income affidavit and her son's income or occupancy, the court found the agency's denial of the applicant son's succession rights to have been arbitrary and capricious.

25. The GM finds that Ms. Ephord's failure to obtain written permission for Mr. Watts to live with her in the Apartment and her failure to identify Mr. Watts during her annual recertification interviews is not an absolute bar or an irrebuttable presumption to defeat his succession rights. Moreover, as in *Murphy*, there was no evidence that Ms. Ephord's failure to include her husband in her income affidavits was related to Mr. Watts status as a co-occupant or as an income earner.

26. The question for the GM is whether the County, through its Agency and the Liberty Square management office, was aware of Mr. Watts' occupancy of the Apartment. In the initial Report which denied the County's initial Motion for Summary Judgment,

the GM found that issues of material fact remained and that further development of the record was required, in part, because the relationship between the County and Liberty Square Apartments, the Liberty Square Resident Council, and the Management Office for the Liberty Square Apartments remained unclear. Based upon the summary judgment evidence on cross-motions, the GM now finds that the Liberty Square management office and the Council were aware of Mr. Watts' lengthy tenancy in his wife's Apartment and that this awareness is sufficient to trigger application of the *McFarlane* rule.

27. The GM further finds that the County offered no competent evidence that the Liberty Square on site management office was not aware that Mr. Watts lived with Ms. Ephord in the Apartment at all times material to this dispute. At most, Mr. Telfort testified that he could not remember seeing Ms. Ephord and Mr. Watts together at Liberty Square when he was the on site manager. In addition to the totality of the circumstances, the GM also finds that consideration of mitigating factors, including Mr. Watts' disability and indigence and long term residence at Liberty Square support his entitlement to remaining family member status. Indeed, the County has not rebutted Mr. Watts' affirmative defenses which raise these mitigating factors.

28. Finally, the GM finds that Ms. Ephord could not unilaterally waive her spouse's entitlement rights to succeed to her tenancy upon her death. *See Morrisania II Assoc.*

v. Harvey, 139 Misc.2d 651, 662 (1988)(holding that the tenant mother and her children had independent federal rights to continued occupancy such that the mother could not alienate her children's succession rights to her tenancy since family relationship alone does not operate to create an agency).

29. The County argued that by granting Mr. Watts' Motion that the GM would create a "loophole" through which an unscrupulous person could easily steal a public housing unit by moving in, hiding, and saying "hi" to a maintenance worker. The GM disagrees based upon guidance from the *McFarlane* rule and the numerous subsequent New York appellate and division courts decisions that have ruled both in favor of and against petitioners seeking remaining family member status. The GM finds no reason to depart from a determination of this action on its specific facts as the New York courts have done when considering the totality of the circumstances for each case on its own merits.

30. Absent timely exceptions pursuant to Fla. R. Civ. P. 1.490(h), Mr. Watts' Motion for Summary Judgment is granted and the County's Motion for Summary Judgment is denied.

This hearing was recorded by the Magistrate's Office on February 22, 2016, on CD 4, Track No. 1 and and March 31, 2016 on CD 3, Track No. 8.

IF YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS

MADE BY THE MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH FLORIDA RULE OF CIVIL PROCEDURE 1.490(I). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.

This Report and Recommendation is filed with the Clerk of Court in Miami, Miami-Dade County, Florida, this 21st day of April, 2016.

Elizabeth M. Schwabedissen
GENERAL MAGISTRATE

Conformed copies of this Report were furnished by e-mail on April 21, 2016, to:

Mehdi Manseur, Esq., memanseur@gmail.com
Sean Rowley, Esq., srowley@lsgmi.org mcabrera@lsgmi.org
Aviva L. Wernick, Esq., aviva.wernick@hugheshubbard.com
Jeffrey Goldberg, Esq., jeffrey.goldberg@hugheshubbard.com