

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26058
G/kmg

_____AD3d_____

Argued - December 17, 2009

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
ANITA R. FLORIO
LEONARD B. AUSTIN, JJ.

2009-04343

DECISION & ORDER

In the Matter of Nelly Flores-Tully, appellant, v City
of New York Department of Housing Preservation
and Development, et al., respondents.

(Index No. 25830/08)

Thomas C. Monaghan, Broad Channel, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F.X. Hart,
William H. Vidal, and Jane L. Gordon of counsel), for respondent City of New York
Department of Housing Preservation and Development.

Amsterdam & Lewinter, New York, N.Y. (Joseph P. Mitchell of counsel), for
respondent Dayton Towers Corporation.

In a proceeding pursuant to CPLR article 78 to review a determination of the
respondent City of New York Department of Housing Preservation and Development dated August
4, 2008, which denied, inter alia, the petitioner's application for succession rights to apartment 4-M
owned by the respondent Dayton Towers Corporation, the petitioner appeals from a judgment of the
Supreme Court, Queens County (Dollard, J.), entered April 2, 2009, which denied the petition and
dismissed the proceeding.

ORDERED that the judgment is affirmed, with one bill of costs.

Contrary to the petitioner's contention, the determination that she did not have

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OF HOUSING PRESERVATION AND DEVELOPMENT

succession rights to apartment 4-M (hereinafter the subject apartment), in the building owned by the respondent Dayton Towers Corporation (hereinafter Dayton), was not arbitrary and capricious and had a rational basis (*see generally Matter of Peckham v Calogero*, 12 NY3d 424, 431). It is undisputed that the petitioner was never named on the income affidavits filed for the subject apartment prior to the death of the tenant of record, her late husband, nor was Dayton ever notified of her occupancy of that apartment prior thereto. Moreover, it is undisputed that she filed income affidavits in which she averred she occupied apartment 10-A in that same building (*see* 9 NYCRR former 1727-8.2[a][5]; 28 RCNY 3-02[p][3]; *Matter of Gilbert v Perine*, 52 AD3d 240; *Matter of Callwood v Cabrera*, 49 AD3d 394; *Matter of Hochhauser v City of N.Y. Dept. of Hous. Preserv. & Dev.*, 48 AD3d 288; *Matter of Greichel v New York State Div. of Hous. & Community Renewal*, 39 AD3d 421).

The petitioner's remaining contentions are without merit.

PRUDENTI, P.J., MASTRO, FLORIO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court