

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

D34214  
H/nl

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Argued - January 26, 2012

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

2010-11526

DECISION & ORDER

In the Matter of Dwayne Morton, petitioner-respondent,  
v New York City Department of Housing Preservation  
and Development, appellant, et al., respondent.

(Index No. 12996/10)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Elizabeth S. Natrella and Alyse Fiori of counsel), for appellant.

Gallet Dreyer & Berkey, LLP, New York, N.Y. (Michelle P. Quinn of counsel), for petitioner-respondent.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the New York City Department of Housing Preservation and Development dated January 27, 2010, which denied the petitioner's application for succession rights to an apartment located in a development organized under the Private Housing Finance Law and owned by Sam Burt Houses, Inc., the New York City Department of Housing Preservation and Development appeals from a judgment of the Supreme Court, Kings County (Baynes, J.), dated August 13, 2010, which granted the petition and, in effect, annulled the determination.

ORDERED that the judgment is reversed, on the law, with costs, the petition is denied, and the proceeding is dismissed on the merits.

Contrary to the Supreme Court's determination, the finding of the New York City Department of Housing Preservation and Development that the petitioner did not have succession rights to an apartment in a building owned by Sam Burt Houses, Inc., was not arbitrary and capricious, and had a rational basis in the record (*see* CPLR 7803[3]; *see generally* *Matter of*

March 13, 2012

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*Peckham v Calogero*, 12 NY3d 424, 431). There was a rational basis in the record for the finding that the petitioner was not a “family member” as defined by the Rules of the City of New York and, therefore, that the petitioner could not succeed to the leasehold rights of the subject Mitchell-Lama apartment (28 RCNY 3-02[p][2][ii], [3]; see *Matter of Alfred v Barrios-Paoli*, 251 AD2d 659, 660; *Matter of Williams v New York City Dept. of Hous. Preserv. & Dev.*, 17 Misc 3d 1129[A], 2007 NY Slip Op 52188[U]; cf. *RHM Estates v Hampshire*, 18 AD3d 326; *Wiener Mgt. Co. v Trockel*, 192 Misc 2d 696).

RIVERA, J.P., ENG, HALL and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court