

**Chan v Gouverneur Gardens Hous. Corp.**

2026 NY Slip Op 31112(U)

March 19, 2026

Supreme Court, New York County

Docket Number: Index No. 152300/2025

Judge: Kathleen Waterman-Marshall

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31**

*Justice*

-----X

STEPHANIE CHAN,

Plaintiff,

- v -

GOUVERNEUR GARDENS HOUSING CORP., NEW YORK  
CITY DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT

Defendant.

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**INDEX NO.** 152300/2025

**MOTION DATE** 02/19/2025

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 53, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, the motion of petitioner Stephanie Chan (“Ms. Chan”) for an order, pursuant to Article 78 of the CPLR, annulling respondent New York City Department of Housing Preservation and Development’s October 30, 2024 decision, which denied Ms. Chan succession rights to a residential apartment, is denied and the matter is disposed.

**Background**

Nonparty Howard Epstein (“Mr. Epstein”) was a tenant and shareholder at Gouverneur Gardens Housing Corp. (“Gouverneur Gardens”), a Mitchell-Lama co-operative, from 1964 to 2022. As relevant to this action, Mitchell-Lama buildings provide below market-rate housing to tenants and shareholders. Ms. Chan contends that she resided with Mr. Epstein in his apartment at Gouverneur Gardens for approximately 11 years, and continued to reside in the apartment for approximately two more years during the COVID-19 pandemic, when Mr. Epstein temporarily moved to Ms. Chan’s parents’ home outside of New York City until his death on December 27, 2022.

In 2022, the landlord of Gouverneur Gardens Housing Corp. commenced eviction proceedings contending that Mr. Epstein had improperly sublet the subject apartment to Ms. Chan. Thereafter, Ms. Chan applied for succession rights of the subject apartment. Ms. Chan’s application was denied by Gouverneur Gardens, and she took an administrative appeal to New York City Department of Housing Preservation and Development (“HPD”). HPD denied Ms. Chan’s appeal by Denial of Succession Rights and Certificate of Eviction dated October 30, 2024 (“HPD Decision”). Ms. Chan then filed the instant Article 78 petition seeking to annul the HPD Decision and grant her succession rights.

Ms. Chan contends that she has known Mr. Epstein since her birth more than 30 years ago, and that they shared a grandparent/grandchild or godparent/godchild relationship. She alleges that Mr. Epstein had a deep, decades long, familial bond with her and her parents, which began when Mr. Epstein was the teacher of her father in the sixth grade. Ms. Chan's parents resided with Mr. Epstein in the subject apartment from 1981 until 1987, when they purchased a home in Rockland County, which Ms. Chan contends was used as a weekend residence. Although Ms. Chan is not a relative of Mr. Epstein, she contends that she had a family-like relationship with Mr. Epstein, and that she is entitled to succession rights under 28 RCNY § 3-02(p)(2)(ii)(B) on this basis.

## **Discussion**

### *I. Leave to Submit Untimely Reply*

Ms. Chan's request to submit an untimely reply is denied. The parties stipulated, and the Court so-ordered, an extended briefing schedule. Under that Order, Ms. Chan's reply was due June 3, 2025 and the petition was to be marked fully submitted on June 4, 2025 (NYSCEF Doc. No. 62). By letter dated July 30, 2025, nearly two months after the motion was marked fully submitted, Ms. Chan requests additional time to submit a reply. The request is denied as untimely.

### *II. Article 78*

The standard of review of an agency determination via an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination, or whether the determination is arbitrary and capricious (*Matter of Gilman v New York State Div. of Housing and Community Renewal*, 99 NY2d 144 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Peckham v Calogero*, 12 NY3d 424 [2009]; *see also Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). When an agency determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v Calogero*, 12 NY2d at 431).

To qualify for succession rights, Ms. Chan must establish: that she is a family member under the guidelines; she resided in the subject apartment with Mr. Epstein during the co-residency period; and she was listed on the income affidavits for the subject apartment (9 NYCRR § 1727-8.2).

There can be no argument that Ms. Chan is a not family member as defined under 28 RCNY 3-01(p)(2)(ii)(A).<sup>1</sup> She did not provide any evidence of adoption or birth certificates which would establish that she was a family member under the regulation. Thus, she must establish a family-like relationship, and emotional and financial commitment and interdependence with Mr. Epstein to qualify for succession rights. 28 RCNY § 3-02(p)(2)(ii)(B) provides for a non-exhaustive list of factors to be considered in determining whether a person

<sup>1</sup> That section defines family member as "a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant/cooperator".

claiming succession rights who is not a “family member,” as defined under 28 RCNY § 3-02(p)(2)(ii)(A), may nevertheless have a sufficient family-like relationship to qualify for succession rights. The factors, none of which are singularly determinative, include:

- a. Longevity of relationship;
- b. Reliance upon payment of, or share of, household expenses;
- c. Intermingled finances;
- d. Engaging in family activities (jointly attending functions and celebrations);
- e. Formalized legal obligations (wills, power of attorney, health-care proxy);
- f. Holding themselves out as family members;
- g. Regularly performing family functions (caring for each other, or extended family members);
- h. Engaging in other patterns of behavior which evidence a long-term emotionally committed relationship.

In reviewing the HPD Decision, the Court is constrained to consider only that which was before the HPD in Ms. Chan’s underlying request for succession rights. This Court may not consider material which is *de hors* the record, that is to say material which was not presented in the administrative proceeding (*Lusker v City of New York*, 194 AD2d 487 [1st Dept 1993]; *Matter of Levine v New York State Liq. Auth.*, 23 NY2d 863 [1969]). Notably, there is no administrative hearing for the succession rights at issue here, the determination is made based upon an application (*see Belok v New York City Dept. of Hous. Preserv. & Dev.*, 89 AD3d 579, 580 [1st Dept 2011]).

The manner in which Ms. Chan has filed the documents upon which she relies has made review of this Article 78 proceeding unduly burdensome. Ms. Chan has filed individual exhibit documents from “A” through “UU” as well as separate documents for her prior submissions before the administrative agency. This has the effect of conflating new evidence submitted for the first time in this Article 78 proceeding with the documents actually before the administrative agency when it made its decision to deny succession rights. Nevertheless, Gouverneur Gardens has identified several documents submitted for the first time in this Article 78 proceeding, and Ms. Chan did not timely file opposition refuting Gouverneur Gardens’ claim that the documents were not previously submitted; thus, they will not be considered in this Article 78 proceeding. These documents include Ms. Chan’s affirmation in this action, Dr. Ng’s affirmation, Mr. Epstein’s Will, Mr. Epstein’s August 5, 2020 letter to Ms. Chan’s counsel, the Memorial Sloan Kettering Cancer Center Statement, Mr. Epstein’s Power of Attorney and those portions of family photographs and teachers’ pension statements which were not included in the application for succession rights. While the additional evidence that Ms. Chan seeks to submit for the first time on this Article 78 proceeding may have been sufficient to impact the HPD Decision, this evidence cannot be submitted for the first time in an Article 78 proceeding.

Ms. Chan’s application for succession rights chiefly comprised: her parent’s marriage certificate; income affidavits for the subject apartment; Ms. Chan’s mother’s nursing registration; the Gouverneur Gardens’ October 16, 2013 notice denying succession rights; a single “360 Checking” account statement of unknown account number reflecting a September 2022 “ClickPay” withdrawal; a photo of a computer screen showing a “360 Checking” account of unknown account number listing both Ms. Chan and Mr. Epstein as account holders; a

CapitalOne credit card statement cover page; Ms. Chan's 2020, 2021, 2022 income taxes, and family photographs with Mr. Epstein (NYSCEF Doc. No. 70). It appears that during the administrative appeal, Ms. Chan submitted: screenshots of maintenance payment email receipts; a letter from Dr. Ng; documents in response to the Hearing Officers request for proof that the subject apartment was Mr. Epstein's permanent place of residence; Ms. Chan's driver's license; the CapitalOne x8761 statement for October 2020, November 2020, February 2021, January and 2021; Ms. Chan's paystubs; Ms. Chan's voter registration notice; various tax and stimulus check payments; Mr. Epstein's Social Security cost of living letter; Mr. Epstein's teacher's retirement documents; and Mr. Epstein's tax returns (NYSCEF Doc. No. 72).

There is rational support in the record, as it existed before the HPD, for its decision denying Ms. Chan succession rights. There was little evidence of financial reliance or interdependence between Ms. Chan and Mr. Epstein. While the parties had a shared bank account, the account statements provided by Ms. Chan for that shared account showed little activity outside of monthly maintenance fees for the subject apartment. The HPD Decision noted that deposits into the shared bank account closely matched the withdrawals for the monthly maintenance. However, the source of these deposits, whether from Ms. Chan, or from Mr. Epstein, or from someone else, is a mystery on this record.<sup>2</sup> Notably, both parties maintained separate bank accounts into which their wages were deposited, and although Ms. Chan claimed she helped with household bills, she did not submit evidence that she paid or shared household expenses with Mr. Epstein, other than the monthly maintenance. Given that Ms. Chan was living in the apartment, her receipt of email payment voucher/receipts from QuickPay, the processor of the monthly maintenance fees, does not demonstrate a financial reliance or interdependence between Ms. Chan and Mr. Epstein. In any event, it is unclear who was responsible for the substantial portion of maintenance fees until October 2020, when the receipts indicated the maintenance fees began to be paid by Ms. Chan and Mr. Epstein's joint account.<sup>3</sup>

The Hearing Officer's consideration of the income affidavits for the subject apartment and determination that they were unreliable is also rationally supported by the record. As noted by the Hearing Officer, Ms. Chan was listed on the affidavits for nearly a decade while she was minor and presumed to be residing with her parents outside of the apartment. Put simply, there was no evidence before HPD showing that Ms. Chan resided in the subject apartment during nearly half of the time she was listed on the income affidavits other than her own affidavit (1999, 2001, 2003, 2004, 2005, 2006, 2007, 2008, 2009) and, therefore, HPD determined that the income affidavits submitted for years after Ms. Chan reached majority were not reliable (2012, 2014, 2015, 2016, 2017, 2018, 2019). Ms. Chan's affidavit on her HPD appeal also supports HPD's determination that the income affidavits are unreliable. She contends that she resided with Mr. Epstein in the subject apartment since 1999; however, Ms. Chan was seven years old in 1999 and contends that her parents were living full-time in Rockland County at that time. There is no evidence that Mr. Epstein had custody of Ms. Chan while she was a minor. Conspicuously absent

<sup>2</sup> It appears that most of the deposits into the shared bank account originated from an account ending in x0569, but no evidence is provided as to the owner of the x0569 account.

<sup>3</sup> Notably, the QuickPay receipts list payments from two separate bank accounts. From August 2018 through September 2020 the payments originated from an account ending in x6896; from October 2020 on the payments originate from Ms. Chan's and Mr. Epstein's shared bank account ending in x8761. No evidence was provided as to the owner of the account ending in x6896.

from the record is any evidence that Ms. Chan resided with Mr. Epstein while she was a minor, beyond her own affidavit, such as affidavits from Ms. Chan's parents or school records indicating that she attended school in NYC as opposed to Rockland County. Contrary to Ms. Chan's position in this Article 78 proceeding, HPD's determination that the income affidavits were unreliable, and did not favor a finding of a family-like relationship or financial interdependence or reliance, is supported by a rational basis.

There is also little evidence that Ms. Chan and Mr. Epstein held each other out as family members. Ms. Chan submitted a January 2019 car insurance policy listing Mr. Epstein, herself, and other members of the Chan family. On that document, Ms. Chan is listed as a relative of Mr. Epstein. She did not submit affidavits from members of the community, friends, or other family members substantiating her claim that she and Mr. Epstein held each other out as family members. The Hearing Officer's determination that Dr. Ng's letter was conclusory and did not amount to reliable or credible evidence of a family relationship between Ms. Chan and Mr. Epstein is also supported by a rational basis. The letter, signed on October 18, 2022, provides:

To Whom it May Concern:

I have known Mr. Howard Epstein for more than 50 years. Since 1981, he has been a family with the Chans (Arthur, Evelyn Stephanie, and Lawrence). They share their homes with each other and they travel together.

Because his underlying medical conditions increase his risk of severe COVID-19, he was advised to stay out of New York City where the incidence of COVID-19 is very high.

He is under the care of Evelyn Chan, who is a registered nurse, for his multiple medical problems and recent surgeries. He may return to New York City with the incidence of COVID-19 decreases.

Dr. Ng's letter concludes that Ms. Chan is a family member of Mr. Epstein without providing a basis for his conclusion, other than stating he has known Mr. Epstein for five decades. He does not provide interactions with Ms. Chan or efforts by Ms. Chan to care for Mr. Epstein which support his conclusion. Instead, Dr. Ng stated that Ms. Chan's mother, Evelyn, was caring for Mr. Epstein. Accordingly, the HPD's determination that Dr. Ng's letter does not provide evidence of a financial or emotional reliance or interdependence or family-like relationship with Ms. Chan is rationally based upon the record.

In the same vein, there is a lack of evidence that Ms. Chan performed family functions with Mr. Epstein, such as taking care of him. To be sure, the evidence shows a close relationship between the Chans and Mr. Epstein; however, the evidence before HPD established that Ms. Chan's mother, Evelyn, was caring for Mr. Epstein following his surgery and emergence of COVID-19. There are no affidavits or other evidence demonstrating that Ms. Chan took care of

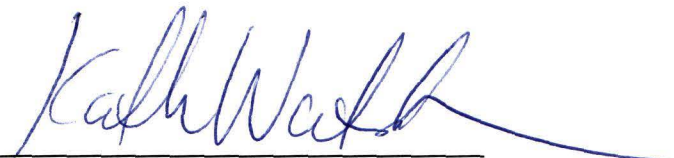
Mr. Epstein.<sup>4</sup> Accordingly, HPD’s determination that there was insufficient evidence to establish that Ms. Chan and Mr. Epstein regularly performed family functions is rationally related to the record.

At bottom, the record reflects that Ms. Chan established a 30-year relationship with Mr. Epstein and that she and Mr. Epstein engaged in family activities by jointly attending functions and celebrations; however, the record does not demonstrate that Ms. Chan and Mr. Epstein intermingled their finances, formalized their legal obligations, held themselves out as family members, or that Ms. Chan took care of Mr. Epstein. Accordingly, HPD’s Decision denying Ms. Chan succession rights, after considering the totality of the factors under 28 RCNY § 3-02(p)(2)(ii)(B), has a rational basis in the record.<sup>5</sup>

Accordingly, it is

**ORDERED** that the petition is denied and the matter is dismissed.

3/19/2026  
DATE

  
HON. KATHLEEN WATERMAN-MARSHALL, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

<sup>4</sup> Ms. Chan did not submit Mr. Epstein’s power attorney, naming her father, on her application to Gouverneur Gardens or her appeal to HPD She did, however, provide Mr. Epstein’s healthcare proxy which named Ms. Chan’s mother.

<sup>5</sup> Respondents argue that the HPD’s Decision also appropriately denied Ms. Chan succession rights based upon her income, considering the purpose of Mitchell-Lama is to benefit low and middle-income individuals. However, this is improper, and the Court would not countenance denial of succession rights on the basis. The income of an applicant is not a relevant consideration for succession rights and finds no support in the regulation (28 RCNY § 3-02[p] et seq.).