

Matter of Joseph v HPD/Esplanade Gardens, Inc.

2009 NY Slip Op 31096(U)

April 15, 2009

Supreme Court, New York County

Docket Number: 402249/08

Judge: Joan A. Madden

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

PRESENT: Hon Joan A. Madden
Justice

PART 11

Index Number : 402249/2008
JOSEPH, DIN
VS.
HPD/ESPLANADE GARDENS INC.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

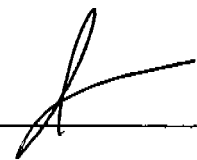
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion pursuant to Article 78 relief is decided in accordance with the enclosed memorandum Decision order & Judgment.

UNFILED - JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)

Dated: April 15, 2009


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 11

-----X

In the Matter of the Application of DIN JOSEPH,

Petitioner,

Index No. 402249/08

-against-

HPD/ESPLANADE GARDENS, INC.,

Respondents

JOAN A. MADDEN, J.

no judgment. no entry can be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1B)

In this Article 78 proceeding, petitioner Din Joseph ("Joseph"), who appears pro se, seeks an order and judgment annulling the respondent New York City Department of Housing Preservation and Development's ("HPD") May 13, 2008 determination which denied Joseph's application for succession rights to a Mitchell-Lama apartment located at 254 Seventh Avenue, New York, NY ("Building"), or alternatively, annulling HPD's July 30, 2008 denial of his request to reopen his default in the May 13, 2008 determination. HPD and the respondent Esplanade Gardens, Inc. ("Esplanade"), Mitchell-Lama housing company that the owns and manages the Building, each filed a verified answer opposing the petition.

Background

Mitchell-Lama housing projects provide subsidized housing for "persons or families whose probable aggregate annual income at the time of admission and during the period of occupancy does not exceed the greater of (i) the median income for such persons or families for the New York City metropolitan statistical area or (ii) seven times the annual rental, including the value or cost of heat, light, water and cooking fuel, except that in the case of families with three or more dependents, such ratio shall not exceed

eight times the annual rental.” 28 R.C.N.Y. § 3-03(a)(1). HPD is the supervising agency for Mitchell-Lama housing companies, such as Esplanade, within the City of New York.

The apartment’s tenant/cooperator of record was Florence Stribling (“Stribling”), who died on August 22, 2004 (HPD Verified Ans. Ex. H). Sometime thereafter, Stribling’s daughter, Gertrude Stribling-Serrano (“Serrano”), applied to Esplanade for succession rights to the apartment on behalf of herself and Joseph, who is Serrano’s son and Stribling’s grandson. Esplanade denied her application (See HPD Verified Ans. Ex. G). By letter to HPD dated, December 26, 2006, Serrano indicated her intention to appeal (HPD Verified Ans. Ex. A). HPD responded in a letter dated January 16, 2007, that requested additional documentation, and that supplied “a suggested list of documentation” that might demonstrate the required primary residency (HPD Verified Ans. Ex. B). This list suggested “documents [that] should include, but are not limited to, lease(s), recertification forms, income affidavits, death certificates and other relevant written material submitted by the original tenant and retained by the housing corporation[,] and any records or documents . . . the occupant [submitted to Esplanade]” (HPD Verified Ans. Ex. C). HPD mailed the letter and the list to Serrano, Joseph, and Esplanade (See Verified Ans. Ex. B, C).

On July 18, 2007, after HPD apparently did not receive the requested documentation from either Serrano, Joseph, or Esplanade, HPD mailed another request for documents to only Serrano and Esplanade (HPD Verified Ans. Ex. D). Esplanade responded on November 1, 2007 by mailing its documents supporting denial of succession rights to Serrano and Joseph, documents which included copies of income affidavits for 2002 and 2003 (the two years prior to Stribling’s death), which did not list

Joseph as an occupant of the apartment (Esplanade Verified Ans. Ex. D). In contrast, the income affidavits for 2000 and 2001, which Esplanade also included, identified Joseph as an occupant of the apartment (Id.). Neither Joseph nor Serrano replied to the letters. HPD thus sent out another request to them, dated March 12, 2008, (HPD Verified Ans. Ex. F), and again they did not reply (See HPD Verified Ans. Ex. G).

By decision dated May 13, 2008, HPD denied Serrano's and Joseph's application for succession rights and issued a certificate of eviction against them on the grounds that they failed to prove that they were Stribling's family members and failed to prove that they resided with Stribling for the two years prior to her vacating the apartment (Id.). Joseph responded in a letter to the HPD Administrative Officer, Frances Lippa, Esq., which requested to "appeal[]" the determination, "or alternatively . . . that [Lippa's] decision be reconsidered . . ." (HPD Verified Ans. Ex. H). The letter indicated that Joseph had received HPD's first letter dated January 16, 2007, but not either of the subsequent letters (Id.). Joseph enclosed documents, and claimed he submitted those documents before, in response to the January 16, 2007 letter (Id.).

The HPD replied in a letter dated July 30, 2008, acknowledging that "[Joseph] wish[es] to appeal the May 13, 2008 decision. Alternatively, [Joseph] requested that [HPD] reopen the May 13, 2008 decision" (HPD Verified Ans. Ex. I). The letter advised Joseph that he could only appeal by commencing an Article 78 proceeding. It also declined to reopen the May 13, 2008 decision, since "[a]t a minimum, [Joseph] ha[s] failed to prove that [he is] entitled to succession rights to the subject apartment." It "put aside the question of whether [Joseph] satisfactorily explained [his] default and failure to

timely submit documents in this matter,” and instead addressed his documentary failures.

The letter stated:

The HPD rules provide that an applicant for succession rights must be included on the relevant income affidavits in order to be granted succession rights. If an applicant for succession rights is not included as an occupant of the subject apartment on the relevant income affidavits that applicant cannot be granted succession rights.

The tenant died on August 22, 2004. Therefore the requisite co-residency period is August 22, 2002, through August 22, 2004.

You [Joseph] were not included as an occupant of the subject apartment on the income affidavits for calendar years 2002 or 2003. Therefore, regardless of your family relationship to the tenant, you cannot be granted succession rights to the subject apartment. Since you cannot be granted succession rights to the subject apartment, there is no reason or basis to reopen the May 13, 2008 decision.

(Id.).

Joseph responded by commencing this Article 78 proceeding. In his petition, Joseph states, “I need succession rights to keep my grandmother’s apartment. I have submitted proof of relationship [and] proof that I ha[ve] lived in this apartment for over 20+ years. I also have 2 younger sister[s] who also appear on income affidavits that stay with me.” Joseph’s proof is found in the exhibits attached to the petition; these exhibits consist of HPD’s May 13, 2008 determination, a letter from HPD to petitioner dated July 20, 2008 affirming that determination and advising him that his sole redress is an Article 78 proceeding, birth certificates for petitioner and Serrano reflecting that petitioner is Serrano’s son and that Serrano is Stribling’s daughter, petitioner’s W-2 tax form for 2001, a 2006 application by petitioner to vacate a default judgment obtained against one Richard Stribling by Esplanade reflecting that petitioner represented that he is Richard Stribling’s grandson, household income affidavits for 1990, 1991, and 2001 reflecting that petitioner resided with Stribling during those years, Stribling’s death certificate

reflecting that she resided in the apartment at the time of her death on August 22, 2004, and Richard Stribling's death certificate reflecting that he was married to Stribling and resided in the apartment at the time of his death on October 28, 1990.

HPD responds that one requirement to obtain succession rights to a Mitchell-Lama apartment is to appear on the income affidavits for the two consecutive annual reporting periods prior to the prior tenant's vacating of the apartment. HPD argues that its May 13, 2008 determination was reasonable since Joseph made no showing that he met that requirement or the other requirements. HPD also argues that its July 30, 2008 denial of Joseph's request to reopen his default was reasonable since Joseph did not appear on the relevant income affidavits as an occupant, and thus his application could not prevail on the merits (HPD Memorandum of Law 9-11).

Esplanade offers effectively identical arguments (Esplanade Memorandum of Law 6-7).

Discussion

HPD's determination must be upheld unless it "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . ." CPLR 7803(3). The Court does not examine the facts de novo to reach an independent determination, Matter of Mays-Watt v. Hernandez, 196 Misc. 2d 56, 59 (Sup. Ct. Bronx Cty. 2004) (citing Greystone Mgmt. Corp. v. Conciliation & Appeals Bd., 94 A.D.2d 614 (1st Dep't 1982), aff'd 62 N.Y.2d 763 (N.Y. 1984)), and must defer to the administrative fact-finder's assessment of the evidence, Lindemann v. Am. Horse Shows Ass'n, 222 A.D.2d 248, 250 (1st Dep't 1999). An agency decision will only be overturned if the decision lacks a supporting rational basis, Rudin Mgmt. Co., Inc. v.

New York State Div. of Hous. & Cmty. Renewal, 215 A.D.2d 243, 243 (1st Dep't 1995).

In particular, the Court will uphold an agency's construction of the statutes or regulations that the agency administers unless that construction is "irrational or unreasonable"

Matter of Howard v. Wyman, 28 N.Y.2d 434, 438 (1971).

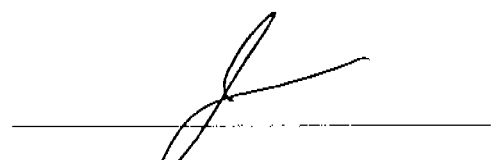
Under this standard, there is no basis to annul HPD's determination. The rules governing succession rights to Mitchell-Lama apartments in New York City are set forth in 28 R.C.N.Y. § 3-02(p). The person seeking succession must be approved from a waiting list or must be related to the tenant of record and "must have resided in the apartment with the former legal tenant for two years immediately prior to the tenant's permanent vacatur of the apartment" and "appeared on the income affidavits for at least the two consecutive annual reporting periods prior to the [tenant of record]'s permanent vacating of the apartment" 28 R.C.N.Y. § 3-02(p)(3), Matter of Waldman v. New York City Dep't of Hous. and Dev., 10 Misc. 3d 1075(A), *3 (Sup. Ct. N.Y. Co. 2005), aff'd, 36 A.D.3d 501 (1st Dep't 2007).

In her May 13, 2008 determination, the HPD's Administrative Hearing Officer states in pertinent part, "[t]he applicants [Serrano and Joseph] have failed to prove . . . that they co-resided with [Stribling] for the two years prior to her vacatur of the apartment" (See HPD Verified Ans. Ex. G). As noted above, Stribling died on August 22, 2004. In his request to appeal the May 13, 2008 determination and/or to open up the default, Joseph submitted documents that arguably show that he resided with Stribling during that period. However, the income affidavits of that period failed to name him, as the Regulations require. See 28 R.C.N.Y. § 3-02(p)(3). Thus, it cannot be said that the HPD's May 13, 2008 and July 30, 2008 determinations are without a rational basis.

Accordingly, it is hereby

ORDERED and ADJUDGED that petitioner's application is denied and the petition is dismissed.

DATED: April 5, 2009


J.S.C.

All documents filed in this case shall be filed with the County Clerk and the County Clerk shall be deemed to have received notice of any motion or other pleading filed in this case. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 118)