

Belok v New York City Dept. of Hous. Preserv. & Dev.

2009 NY Slip Op 33471(U)

December 16, 2009

Supreme Court, New York County

Docket Number: 106944/09

Judge: Nicholas Figueroa

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

-----X

ADAM BELOK,

Petitioner,

- against -

Index No. 106944/09

THE NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION & DEVELOPMENT
and MUTUAL REDEVELOPMENT HOUSES, INC.,

DECISION AND JUDGMENT

Respondents.

-----X

Nicholas Figueroa, J.S.C.:

The Article 78 petitioner seeks to annul a determination by the New York City Department of Housing Preservation & Development denying his application for succession rights to his deceased parents' cooperative apartment. Such determination was based upon a summary hearing by a Department hearing officer, and it affirmed a decision of the redevelopment corporation that operates the building pursuant to an agreement with the City under the New York State Private Housing Finance Law.

Petitioner's claim to the apartment rests on the proposition that petitioner had resided there with his nonagenarian parents continuously since 2004, until the death of his father in November 2005 and then his mother in August 2007. Petitioner alleged that he had been obliged to move in with his parents in order to take care of them, despite the fact that his wife and children continued to live in the family home in Poughkeepsie, New York. According to petitioner, the subject apartment became his primary residence, and he visited his family up-State

on weekends. Petitioner explained that the flexibility of his work as a financial planner had allowed him to attend to his job at both locations. In support of his assertion that he had resided in the apartment for no less than the requisite two years before his mother's death, petitioner submitted several documents for the period in question, including his driver's license, proof of voting registration, tax returns, and a telephone bill for October 2006, all of which indicated that the subject apartment had been his address during the period. Nonetheless, the hearing officer concluded that petitioner did not satisfy the primary-residence requirement for succession.

As a threshold matter, it is noted that the agency's determination should not be disturbed unless it is lacking a rational basis or is arbitrary and capricious (*see Pell v Board of Education*, 34 NY2d 222, 231). Although petitioner argues in substance that the hearing officer could not have rationally resolved the primary-residence issue as she purported to do, *i.e.*, on documents alone, such argument ignores the authorities indicating to the contrary (*see Matter of Pietropolo*, 39 AD3d 406, 407; *Matter of Cadman Plaza North, Inc. v New York City Department of Housing Preservation and Development*, 290 AD2d 344). In any event, the proofs that petitioner chose to submit were scant. Each was, moreover, susceptible of manipulation for deck-stacking purposes if someone were so inclined, as opposed to the kind of proofs that are more reliable indicators of actual daily whereabouts, such as credit card and bank statements and local bills. Indeed, petitioner submitted only one telephone bill for the two-year period, and that bill cut as much against him as for him: it had been issued just after his father's death and just before petitioner asserted a claim to succeed to his father's interest and its report of a flurry of telephone calls from the apartment was in marked contrast to its report of the immediately preceding balance, which apparently had been only in the base amount for monthly use.

Furthermore, other documents in the record tended to show that Poughkeepsie had in fact remained petitioner's center of residential gravity during the period in question. Notably, certain documents submitted by respondent corporation strongly suggested that petitioners' parents themselves had not used the subject apartment as their primary residence for years.

It is noted that petitioner has charged respondent corporation with purposefully withholding one of the income affidavits that petitioner alleges had been filed with that corporation on his mother's behalf. According to petitioner, the omission was critical, having been mentioned in the hearing officer's decision as a basis for concluding that petitioner did not satisfy a precondition to the claimed succession. But petitioner's position on this point is without merit for each of several reasons. First, the record does not substantiate petitioner's allegation that respondent corporation was in possession of the document in question. Second, if such a document had in fact existed, it is reasonable to assume that petitioner (a financial planner) would have taken pains to retain – and then submit to the hearing officer – his own copy. Third, as the hearing officer's decision made clear, petitioner's succession claim would have failed for lack of evidentiary substantiation even if all of the income statements for the period in issue had been put into the record. Finally, petitioner's arguments invoking waiver and estoppel are unavailing in view of the authority recognizing that such equitable principles cannot be used to subvert a governmental department's efforts to meet its statutory responsibilities, in this case the obligation of respondent agency to assure that the preconditions to succession rights be enforced (*see Schorr v New York City Dept. of Hous. Preserv. & Dev.*, 10 NY3d 776).

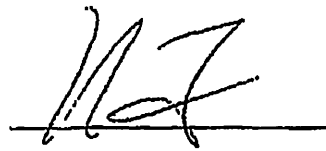
For the foregoing reasons, it is concluded that there is no cause to set aside the challenged

determination. The petition is therefore denied.

This constitutes the decision and judgment of the court.

Dated: December 16, 2009

ENTER:

A handwritten signature in black ink, appearing to be 'J.S.C.', is written over a horizontal line.

J.S.C.