

Matter of Calistro v Lawlor

2011 NY Slip Op 30409(U)

February 22, 2011

Supreme Court, New York County

Docket Number: 100321/09

Judge: Richard F. Braun

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: BRAWN
Justice

PART 23

DAVINA v STEVEN CALISRO

INDEX NO. 100321/09

MOTION DATE 11/4/10

MOTION SEQ. NO. 2

MOTION CAL. NO. _____

NYC DIKER

The following papers, numbered 1 to _____ were read on this motion to/for vacate Respondent's
deformation

FILED

PAPERS NUMBERED

Notice of Motion/ amended Petition Order to Show Cause - Affidavits - Exhibits ... **FEB 23 2011**

1
2, 3, 4
5

Answering Affidavits - Exhibits _____

Replying Affidavits _____

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted to the extent
of restoring this proceeding to the Court's calendar, and
it is further

ORDERED and ADJUDGED that the proceeding
is denied, and it is further

ORDERED that the Clerk shall enter
judgment accordingly, and the counterclaim
is severed and shall continue

This constitutes the decision, order,
and judgment of the Court. See separate Opinions.

Dated: New York, New York, February 18, 2011 ENTERED

[Signature]
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: IAS PART 23**

-----X

In the Matter of the Application of

Index No. 100321/09

DAVINA and STEVEN CALISTRO,

OPINION

Petitioners,

-against-

BRIAN LAWLOR, as Acting Commissioner
of the New York State Division of Housing and
Community Renewal,

-and-

THE NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

-and-

SOUTHBRIDGE TOWERS, INC., as Landlord of
The Building located at 299 Pearl St., NY, NY,

Respondents,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

-----X

RICHARD F. BRAUN, J.:

In this article 78 proceeding, by order to show cause petitioner seeks to restore the matter to the court's calendar; to have leave granted to amend the petition; to annul and vacate respondents' determination denying petitioners succession rights to apartment 5C, at 99 Pearl Street, New York, New York, known as Southbridge Towers; to have petitioners recognized as successor tenants to apartment 5C; to have this proceeding remanded to respondent The New York State Division of Housing and Community Renewal (DHCR) for an evidentiary hearing; to be awarded attorneys' fees,

FILED

FEB 23 2011

NEW YORK
COUNTY CLERK'S OFFICE

costs, and disbursements, pursuant to CPLR 8101; and to stay respondent Southbridge Towers, Inc. (Southbridge) from taking action to evict petitioners pending a final determination of this proceeding.

Since 1997, petitioner Davina Calistro (Davina), has been residing in Southbridge Towers, apartment 5C. She commenced residence there with her great aunt Dorothy Calistro (Dorothy), the tenant of record. Dorothy died in February, 1999. Davina's name was included in the Spring 1998 income affidavit, which was not submitted until May, 1999. In 2000, petitioner Steven Calistro (Steven) moved into 5C with his sister. Commencing in the 2001 income affidavit, Steven has also been included as a resident of 5C. By letter dated April 28, 2008, Southbridge advised Davina and Steven that they were being denied succession rights. Petitioners had not formally applied for succession rights and believed this question was resolved as to Davina in 1999. This article 78 proceeding had been dismissed and discontinued to allow petitioners to engage in the administrative procedures before DHCR necessary to acquire succession rights. However, DHCR ultimately denied petitioners succession rights, by an administrative determination mailed on November 23, 2009. Pursuant to February 9, 2009 stipulation, this proceeding could be recommenced under this index number.

The court has limited authority to review the actions of respondent DHCR (*see Matter of Ansonia Residents Assn. v New York State Div. of Hous. & Community Renewal*, 75 NY2d 206, 213 [1989]). Even if this court might have reached a different conclusion were the court the initial decider, the court must defer to respondent DHCR where its determination was not arbitrary, irrational, or unreasonable (*Matter of West Vil. Assoc. v Division of Hous. & Community Renewal*,

277 AD2d 111, 112 [1st Dept 2000]).

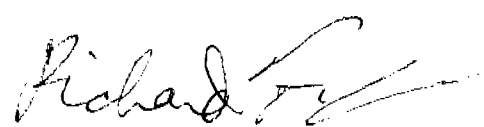
Davina did not establish that under the DHCR regulations she was such a member of Dorothy's family so as to be entitled to succession rights and that she resided in Dorothy's apartment for two years prior to her death on February 12, 1999 (*see Matter of Martino v Southbridge Towers, Inc.*, 68 AD3d 412 [1st Dept 2009]; *Matter of Renda v New York State Div. of Hous. & Community Renewal*, 22 AD3d 382, 382-383 [1st Dept 2005]). Since Davina does not have succession rights, her brother Steven cannot have succession rights through her.

Petitioners argue that they should have been afforded an evidentiary hearing by respondent DHCR. Under the circumstances here, no such hearing was required (*cf. Matter of Daxor Corp. v State of N.Y. Dept. of Health*, 90 NY2d 89, 98, 100 [1997] [there was no right to a hearing as to the denial by the New York State Department of Health of licenses to operate medical facilities]; *Matter of Matter of Fuller v Urstadt*, 28 NY2d 315, 318 [1971] [a full evidentiary hearing was not required where the State agency declined to renew a tenant's sublease]; *Matter of Mayfield v Esplanade Gardens, Inc.*, 30 AD3d 296 [1st Dept 2006] [no hearing was required where the New York City Department of Housing Preservation and Development denied succession rights to an occupant of Mitchell Lama housing]; *Matter of Cadman Plaza N. v New York City Dept. of Hous. Preserv. & Dev.*, 290 AD2d 344, 345 [same]; *Matter of Rubin v Eimicke*, 150 AD2d 697, 698 [2nd Dept 1989], *appeal den.*, 75 NY2d 704 [1990] [an evidentiary hearing was not required where DHCR directed a rent reduction for a rent stabilized apartment]).

By this court's separate decision and order, dated February 18, 2011, the motion has been granted to the extent of restoring the petition to the court's calendar. Having been restored, this court

has determined that petitioners have not shown that they are entitled to the balance of the relief sought in the motion. The petition and proposed amendment thereto are meritless. Therefore, the proceeding has been denied. The request for a stay is now moot. Respondent Southbridge's counterclaim for attorneys' fees has been severed and shall continue.

Dated: New York, New York
February 22, 2011



RICHARD F. BRAUN, J.S.C.

FILED
FEB 23 2011
NEW YORK
COUNTY CLERK'S OFFICE