

Matter of Boyd v Lippa
2011 NY Slip Op 30701(U)
March 16, 2011
Sup Ct, NY County
Docket Number: 402227/10
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON
Justice

PART 55

Index Number : 402227/2010
~~BOYD, EMILY~~ ELTJATH
VS.
LIPPA, FRANCES, H.P.D.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 10/19/11
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

This motion to/for _____

PAPERS NUMBERED
1-3
45

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~~ petition is decided
in accordance with the annexed memorandum
decision, order and 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 141B).

Dated: 3/16/11

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 55

-----X

In the Matter of the Application of

ELIJAH BOYD,

Petitioner,

INDEX NO. 402227/10

DECISION, ORDER and
JUDGMENT

For a Judgment under Article 78 of
The Civil Practice Law and Rules,

-against-

FRANCES LIPPA, MARION SCOTT REALTY,
1199 HOUSING CORPORATION, and NYC
DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Respondents.

-----X

JANE S. SOLOMON, J.:

In this CPLR article 78 proceeding, pro se petitioner Elijah Boyd (Petitioner) seeks to reverse an order that denied his application for succession rights to his mother's apartment in a Mitchell-Lama building located at 2080 First Avenue in Manhattan. For the reasons below, the petition is denied.

BACKGROUND

Petitioner's mother, Leola Boyd, was the tenant of record in apartment 709 at 2080 1st Avenue. The building is owned by East River Landing 1199 Housing Corporation (1199 Housing), which is a company organized under Article II of the Private Housing Finance Law, also known as the Mitchell-Lama Law. The building is managed by respondent Marion Scott Real Estate,

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Inc.

The Mitchell-Lama Law was enacted to encourage the creation of housing for people of low and middle incomes by offering long-term, low interest financing and real estate tax exemptions. In exchange for financial assistance under the Mitchell-Lama Law, property owners accept limits on profits, and are subject to regulations concerning tenant income and tenant selection requirements. Respondent NYC Department of Housing Preservation and Development (HPD) is the City agency charged with overseeing compliance the Mitchell-Lama properties (New York City Charter § 1802[6][d]). Its duties include promulgating rules with respect to tenant selection and continued occupation of apartments (Rules of the City of New York, Title 28, Chapter 3), and supervision to ensure enforcement of those rules. These rules set forth the occupancy and succession rights of a tenant's family members (28 RCNY § 3-02[o][3][I] and § 3-02[p]).

Each year, the tenant of an apartment in a Mitchell-Lama building is required to provide affidavits certifying household income. A family member who is elderly or disabled, and who occupied the apartment for at least year before the named tenant dies, may qualify for succession rights to the apartment if he or she meets eligibility requirements and appeared as a resident in the household income certification (28 RCNY § 3-02[p][3]). A family member who ~~may~~ does not appear on the

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household income certification cannot claim to be an occupant of the apartment for purposes of asserting succession rights in the event the named tenant dies.

In this proceeding, Petitioner alleges that he lived with his mother in apartment 709 at 2080 1st Avenue. He was born in 1939, and is considered a senior citizen under the Rules. By a letter dated February 28, 2009, Petitioner and his mother requested that petitioner be added to the family composition of record in the apartment. Petitioner's mother died on April 5, 2009.

According to a letter from the managing company, dated April 16, 2009, an "occupancy specialist" spoke to Petitioner regarding his request to be added to the apartment's household composition, and he informed the caller that his mother was very sick in the hospital and might not come home, and that he stated that he was not interested in the apartment. The April 16 letter states that the management company determined that he was not entitled to succession rights to the apartment.

Petitioner sought to establish his succession rights to the apartment with HPD (Verified Answer, Ex. F). By an order dated April 9, 2010, HPD hearing officer Frances Lipa found that Petitioner was not entitled to succession rights to the apartment, principally because he had not established that the apartment was his primary residence for at least one year before

his mother died, and he was not included in the household income certification (Verified Answer, Ex. I). Petitioner commenced this Article 78 proceeding seeking to overturn HPD's April 9, 2010 determination.

He argues in part that HPD's determination is based in part on a verbal miscommunication. While not specified, it appears that he refers to the management company's April 16, 2009 letter, reporting that Petitioner had said he had no interest in the apartment. The HPD determination, however, makes no mention of a verbal miscommunication, and is based instead upon documentation provided by petitioner and the managing agent. Petitioner submitted documentation to support his claim, specifically copies of records showing that material from the New York City Retirement System (NYCERS), regarding his pension, were addressed to him at the apartment. The HPD hearing officer noted that he did not submit other material to support his claim, such as utility bills, voter registration, department of motor vehicles documentation, credit card bills or bank statements. Also, it is unrefuted that he was not included as a family member in any relevant household income certification by the tenant.

The court's review of an administrative determination is limited to those factors set forth in CPLR 7803. It is well settled that "a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion" (*Matter of Pell v Board of Education of Union Free*

member (28 RCNY § 3-02[p][3]). Petitioner provides no explanation for this failure. The HPD determination rationally adhered to the relevant rules, and it is not arbitrary or capricious. Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated: March 16, 2011

ENTER:



J.S.C.

JANE S. SOLOMON

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