

**Matter of Heubel v New York City Dept. of Hous.
Preserv. & Dev.**

2011 NY Slip Op 31929(U)

July 7, 2011

Sup Ct, NY County

Docket Number: 100200/11

Judge: Carol E. Huff

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

PRESENT: **CAROL E. HUFF**
Justice

PART 32

Amy Heubel

INDEX NO. 100200/11

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

NYC DEPT. OF HOUSING
PRESERVATION & DEVELOPMENT

The following papers, numbered 1 to _____ were read on 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~~

motion is decided in accordance
with accompanying memorandum decision

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: JUL 07 2011

[Signature]
CAROL E. HUFF

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: PART 32

-----X

In the Matter of the Application of AMY HEUBEL, : Index No. 100200/11
Petitioner, :

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

- against -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION & DEVELOPMENT,

Respondent. :

-----X

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CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks an order annulling the Determination of respondent, dated September 8, 2010, which denied her succession rights to her deceased grandmother's Mitchell-Lama apartment. The Determination was based on a review of documents submitted by petitioner.

Mitchell-Lama housing was created pursuant to Article II of the Private Housing Finance Law to address the housing needs of low-income persons. Among other things, it provides subsidies to building owners in order to enable them to offer lower rents to eligible tenants. Tenants who receive the benefits of the Mitchell-Lama law cannot pass succession rights to others except in specifically defined situations. Family members, including granddaughters (28 RCNY § 3-02[p][2][ii][A]), have succession rights under certain circumstances. The residency requirements for qualified family members' succession rights are set forth in 28 RCNY § 3-02(p)(3):

[I]f the tenant/cooperator has permanently vacated the apartment, any member of such tenant/cooperator's family, who has resided with the tenant/cooperator in the apartment as a primary residence, as determined by § 3-02(n)(4) of these rules, for a period of not less than two years and has appeared on the income affidavits for at least the two consecutive annual reporting periods prior to the tenant/cooperator's permanent vacating of the apartment . . . may request to be named as a tenant/cooperator on the lease. . . . The burden of proof is on said family member to show use of the apartment as his or her primary residence during the required period to be eligible to succeed to possession.

Petitioner's grandmother died on March 22, 2008. Thus, petitioner was required to prove that the apartment was her primary residence during the period March 22, 2006 - March 22, 2008. Although she attended college during that time at the University of Indiana, her attendance is not deemed to interrupt her period of otherwise established primary residency. 28 RCNY § 3-02(p)(5).

In denying petitioner's appeal, the Administrative Hearing Officer found that the income affidavits for the years 2006 and 2007 were suspect, and that her other proofs were either insufficient or not credible.

While petitioner provided copies of income affidavits for 2006 and 2007, both were notarized March 10, 2008, less than two weeks before her grandmother's death. In addition, petitioner provided a printout of an apartment insurance policy due to be renewed April 14, 2007. The policy named the tenant and petitioner, but also named petitioner's mother, who never lived at the apartment. All other documents provided by petitioner to indicate that the apartment was her primary residence were dated after April 14, 2007, well beyond the March 22, 2006 trigger date. For the first year of her purported primary residency, petitioner failed to provide any recommended documents such as certified tax returns, employment records, voting

records, a driver's license, insurance policies, utility bills, credit card statements, bank statements, medical records or school records.

Petitioner provided affidavits from her mother and two neighbors of the subject apartment to support her appeal. Each of the affidavits states that petitioner lived or resided in the apartment during 2006 and 2007. (Although it would not affect the outcome, it goes to credibility that none of the affiants took note of what must have been petitioner's extended absences while she was at college.) In her Determination, the Administrative Hearing Officer stated: "[N]ot one of the affidavits contains any facts or details to substantiate such conclusions. Neither the neighbors nor [petitioner's] mother indicated that they had ever been inside the subject apartment during the required co-residency period. I do not consider the three affidavits to be credible, reliable or sufficient proof of the co-residency." Determination at 4.

"[J]udicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record, and once it has been determined that an agency's conclusion has a sound basis in reason the judicial function is at an end." Makarios v New York City Taxi and Limousine Commn., 49 AD3d 316, 317 (1st Dept 2008), quoting Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of New York Div. of Hous. & Community Renewal, 46 AD3d 425, 428 (1st Dept 2007).

Respondent's Determination is rationally based. Petitioner provided little if any evidence that she used the subject apartment as her primary residence for at least the first year of the two-year period preceding her grandmother's death.

Accordingly, it is

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

Dated: **JUL 07 2011**


CAROL E. HUFF
J.S.C.

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