

Matter of Hamilton v Lindsay Park Hous. Corp.

2013 NY Slip Op 30325(U)

February 8, 2013

Supreme Court, New York County

Docket Number: 402004/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 402004/2012
HAMILTON, AVA
vs.
LINDSAY PARK HOUSING
SEQUENCE NUMBER : 001
ARTICLE 78

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

FILED

FEB 13 2013

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 2/8/13

PK, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----x
In the Matter of the Application of

AVA HAMILTON and JOHN MASTRION,

Petitioners,

Index No. 402004/12

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

LINDSAY PARK HOUSING CORPORATION and
NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT: FRANCES
LIPPA, ADMIN.,

FILED

FEB 13 2013

Respondents.

NEW YORK

COUNTY CLERK'S OFFICE

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioners Ava Hamilton ("Ms. Hamilton") and John Mastrion ("Mr. Mastrion") brought the instant petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to annul and set aside or vacate a determination made by respondents Lindsay Park Housing Corporation ("Lindsay Park") and the New York City Department of Housing Preservation and Development ("HPD") denying petitioners' application for succession rights to a certain apartment. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. Lindsay Park is an Article II housing company organized under the Private Housing Finance Law ("PHFL"), also known as the Mitchell-Lama Law, and is the owner of the apartment located at 31 Leonard Street, Apt. 14Q, Brooklyn, New York 11206 (the "subject apartment"). Barbara Hamilton (the "tenant") was the tenant of record for the subject apartment and died on September 6, 2011. Subsequent to the tenant's death, Ms. Hamilton, the tenant's daughter, and Mr. Mastrion, the tenant's minor grandson, sought to obtain the succession rights to the subject apartment from respondent. By letter dated May 14, 2012, Lindsay Park informed petitioners that they were not entitled to succession rights in the subject apartment pursuant to 28 RCNY § 3-02(p), which provides that succession rights can only be granted to family members of the tenant of record who have resided with the tenant for the two years immediately preceding the tenant's permanent vacatur of the apartment. The letter further stated that "a person seeking succession rights who has not been included on the income affidavits signed after February 1, 2003, cannot be awarded succession rights under the HPD rules."

In another letter dated May 14, 2012, HPD Administrative Hearing Officer Frances Lippa ("AHO Lippa") informed petitioners that they could appeal Lindsay Park's decision denying succession rights and submit additional documentation in support of their appeal and included a list of suggested documents to assist petitioners in proving primary residency, the facts respondent uses to determine primary residence and the HPD rules regarding succession rights. In a third letter, also dated May 14, 2012, AHO Lippa requested that Lindsay Park provide any documentation relied upon in its Decision denying succession rights to petitioners.

Petitioners appealed HPD's denial of succession rights and submitted the following

documentation: the tenant's Income Affidavits for calendar years 2007, 2008, 2009 and 2010 and banking statements for the account "Barbara Hamilton [in trust for] John Mastrion" which listed the subject apartment's address. However, Ms. Hamilton's name was not included on the Income Affidavits. In the appeal, Ms. Hamilton claimed that when the tenant's health began to deteriorate in 2010, she became her primary care giver and that she sold her house in 2011 and moved into the subject apartment in April 2011 in order to be with her mother.

AHO Lippa reviewed petitioners' documentation and in a Decision dated July 18, 2012, affirmed Lindsay Park's denial of succession rights to the subject apartment. In her determination, AHO Lippa determined that the relevant period for determining succession rights is September 6, 2009 through September 6, 2011, the latter being the date of the tenant's death. AHO Lippa found that as Ms. Hamilton was not included on the Income Affidavits for the relevant calendar years, she could not demonstrate that the subject apartment was her primary residence or that she co-resided with the tenant for the required co-residency period. Further, AHO Lippa noted that according to Ms. Hamilton's own admission in her appeal, she did not move into the subject apartment until April 1, 2011. Although AHO Lippa found that Mr. Mastrion met the initial burden of showing that he was on the relevant Income Affidavits, he determined that "[t]here is no credible proof that the minor petitioner John Mastrion resided in the subject apartment as his primary residence for the required time period. For example, no school or pediatrician records were submitted to prove that petitioner John Mastrion resided in the subject apartment as his primary residence throughout the co-residency period." Further, AHO Lippa did not find the bank statements indicative of primary residency as they did not amount to "sufficient, credible, or reliable proof that John Mastrion himself resided in the subject

apartment throughout the co-residency period.” Further, AHO Lippa noted that minor children are presumed to reside with their parents and that the presumption may be rebutted by proof that parental control had been surrendered. However, no evidence of such surrendered control was provided. Finally, AHO Lippa noted that Mitchell-Lama apartments are intended for low- and middle-income individuals and must be limited to those who meet the eligibility requirements so the fact that the tenant wished to grant the apartment to petitioners is an insufficient basis for granting succession rights.

By a Notice of Petition and Verified Petition dated September 11, 2012, petitioners commenced the instant proceeding seeking that “the decision of Frances Lippa, Administrative Hearing Officer at the NYC Department of Housing Preservation & Development, dated July 18, 2012 providing Denial of Succession Rights be set aside and annulled or vacated; and that the Notice of Termination from Lindsay Park Housing Corporation be vacated.”

On review of an Article 78 petition, “[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious.” *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1st Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is

without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that HPD’s decision denying petitioners’ application for succession rights to the subject apartment was made on a rational basis. HPD has established rules and regulations that set forth the requirements for family members seeking succession rights to a shareholder’s lease of a Mitchell-Lama apartment. First, the occupant must be included on any income documentation submitted to HPD for at least two consecutive years immediately prior to the tenant’s vacating. *See* 28 RCNY § 3-02(p)(3). Second, the family member seeking succession rights must occupy the apartment as his or her primary residence, as defined in 28 RCNY § 3-02(n)(4) for that same time period. *See Id.* “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.” *Id.* To determine an applicant’s primary residence, HPD may consider, among other things, (1) whether the family member specifies an address other than the subject apartment in a tax return, motor vehicle registration, driver’s license or other document filed with a public agency; (2) whether the family member gives an address other than the subject apartment as his or her voting address; and (3) and whether the family member filed New York City tax returns listing the subject apartment as his or her primary residence. *See* 28 RCNY § 3-02(n)(4)(i)-(iv). Additionally, the family member whose residency is being questioned should provide proof in the form of certified New York State income tax returns, utility bills and voter registration data. *See* 28 RCNY § 3-02(n)(4)(iv). HPD also forwards a list of suggested documents for determining primary residency to applicants.

In her Decision, AHO Lippa rationally found that pursuant to 28 RCNY § 3-02,

petitioners did not prove their qualifications for succession rights. Ms. Hamilton was not listed on any of the relevant Income Affidavits and she did not submit any documentation showing the subject apartment was her primary residence during the required time period. Moreover, she did not even claim to have moved into the subject apartment until April 2011. Further, although Mr. Mastrion was listed on the relevant Income Affidavits, AHO Lippa rationally found that he did not present credible evidence establishing that the subject apartment was his primary residence as neither the Income Affidavits nor the bank statements established that the subject apartment was Mr. Mastrion's primary residence or that he lived there for the requisite time period. Further, AHO Lippa rationally presumed that Mr. Mastrion resided with his parents and petitioners failed to submit any evidence to rebut that presumption.

While petitioners have attached to the instant petition additional documentation regarding Mr. Mastrion's primary residency at the subject apartment, these are facts and information that were not before AHO Lippa when she made her final determination denying petitioners' succession rights to the subject apartment. However, the court cannot consider the submission and consideration of evidence outside of the Administrative Record. "The role of a court in reviewing a decision of an administrative agency, such as HPD, is limited with the standard of review being whether the administrative determination was in violation of a lawful procedure or was affected by an error of law or was arbitrary and capricious and without a rational basis in the administrative record." *Rowan v. NYC HPD*, 21 Misc.3d 1235 at *3 (Sup. Ct. N.Y. Ct., 2011); *see also Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 (1974). "The court cannot conduct a de novo review of the facts and circumstances or substitute the court's judgment for that of the agency's determination" as judicial review of administrative determinations is

