

Matter of Ward v Department of Hous. Preserv. & Dev.

2013 NY Slip Op 30501(U)

March 5, 2013

Supreme Court, New York County

Docket Number: 104180/2012

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. EILEEN A. RAKOWER

PRESENT: _____
Justice

PART 15

Index Number : 104180/2012
WARD, GREGORY
vs.
NYC DEPARTMENT OF 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

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

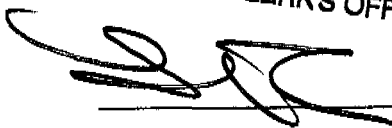
MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.

FILED

MAR 12 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/5/13

 J.S.C.

HON. EILEEN A. RAKOWER

- 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 — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

Justice

In the Matter of the Application of
GREGORY WARD,

Petitioner,

- v -

DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT, AND STRYCKER'S BAY
APARTMENTS, INC.,

Respondent.

INDEX NO. 104180/2012

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1, 2

3, 4, 5

FILED

MAR 12 2013

Cross-Motion: Yes No

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COUNTY CLERK'S OFFICE

Petitioner brings this Article 78 proceeding to annul the determination of the Department of Housing Preservation and Development ("HPD") dated August 6, 2012, that denied him succession rights to his deceased mother, Evelyn Ward's, apartment located at 689 Columbus Avenue, New York, NY 10025, Apartment 14G, in the Strycker's Bay Apartment Buildings (the "Subject Apartment").

Strycker's Bay Apartments, Inc. is the owner and landlord of Apartment 14G at 689 Columbus Avenue, New York, New York. According to the March 4, 1965 application provided to HPD by the Housing Company, Kirkland Ward and Evelyn Ward were to live at the Strycker's Bay Apartments in the subject apartment with their two minor children, including the Petitioner. At some point thereafter, Evelyn Ward became the only remaining tenant of record for the subject apartment.

According to the income affidavits submitted by Evelyn Ward for calendar years 2005 and 2007, she listed herself as the sole occupant of the subject

apartment. The income affidavit for Evelyn Ward from 2006 could not be located.

On September 23, 2008, Evelyn Ward died. Petitioner was the informant on his mother's death certificate and gave 383 St. John's Place in Brooklyn, NY 11238 as his address. Following her death, Petitioner filed an income affidavit for the 2008 calendar year for which he listed himself as the son of Evelyn Ward and the sole occupant of the Subject Apartment.

By letter dated April 25, 2012, the Housing Company rejected Petitioner's application for succession rights to the subject apartment because Petitioner had not demonstrated a two-year period of residency with his mother. Furthermore, by letter dated May 1, 2012, HPD Hearing Officer Frances Lippa ("H.O. Lippa") informed Petitioner that the Housing Company denied his request for succession rights to the subject apartment. Petitioner requested a hearing by letter dated June 5, 2012 "in order to explain in detail the circumstances involved."

By letter dated June 12, 2012, HPD confirmed the receipt of Petitioner's June 5, 2012 letter requesting a hearing for the succession rights matter. The letter informed petitioner that, pursuant to HPD rules, succession rights cases are decided based on the submission of documents, and thus, no hearing would be held on this matter. Petitioner was directed to submit all documentation, with a copy to the attorney of the housing company, by July 16, 2012.

On July 13, 2012, HPD received additional documents from Petitioner including: 1) an undated Board of Elections document listing petitioner's address as the Subject Apartment; 2) a Jury Summons envelope dated June 22, 2012 addressed to Petitioner at the Subject Apartment address; 3) a handwritten "Deed" formed date October 4, 2010 prepared by Petitioner and another Ward relative purporting to transfer property from his mother's estate to himself and his relative and addressed to Petitioner at the Subject Apartment address; 4) a Durable Power of Attorney signed by Evelyn Ward on July 22, 2008 in favor of Petitioner; 5) a Verizon bill dated December 23, 2009 addressed to Evelyn Ward "in care of" petitioner at the Subject Apartment address; 6) undated envelopes from HSBC and AARP addressed to petitioner at the Subject Apartment address; 7) a United State Postal Service Customer Copy receipt dated December 10, 2009, showing the sender to be petitioner at the Subject Apartment address; 8) a form showing that Petitioner changed his address to the Subject Apartment as of March 31, 2012; 9) A Time Warner Cable bill addressed to Petitioner at the Subject Apartment address for the service period of June 20, 2012 to July 19, 2012; 10) an AT&T

* 4]

(3) spent less than an aggregate of 183 days in the preceding calendar year in New York City at such dwelling unit... However, no dwelling unit may be considered the primary residence of the family member unless he or she provides proof that he or she either filed a New York City Resident Income Tax return at the claimed primary residence for the most recent preceding taxable year for which such return should have been filed or that he or she was not legally obligated to file such tax return. The person whose residency is being questioned will be obligated to provide proof that his or her apartment is his or her primary place of residence, including but not limited to, certified New York State income tax returns, utility bills, and voter registration data.

It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency.’” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency’s determination but must decide if the agency’s decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency’s determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency’s determination “arbitrary and capricious” if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Here, as it is undisputed that Petitioner was not listed on Evelyn Ward’s income affidavits for two consecutive years before her death, HPD had a rational basis for denying Petitioner’s succession rights to the premises. (28 RCNY 3-02[p][3]; see, *Matter of Yunayeva v. Kings Bay Housing Co., Inc.*, 94 AD3d 452, 941 NYS2d 591 [1st Dept 2012][denial of succession rights had rational basis as petitioner failed to demonstrate premises was her primary residence and that she had been listed on income affidavits in two years before tenant’s death;] *Matter of Miney v. Donovan*, 68 AD3d 876, 890 NYS2d 616 [2nd Dept 2009], *lv denied* 15 NY 712, 938 NE2d 1012, 912 NY2d 577 [2010][under Mitchell-Lama regulations, occupant who is not listed on income affidavits may not receive succession rights to apartment.]

Petitioner merely submits proof that he listed the Subject Apartment as his

address on various documents *after* Evelyn Ward's death. Accordingly, it was not arbitrary or capricious for the Hearing Officer to deny Petitioner's succession rights.

Wherefore, it is hereby,

ORDERED that this Petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: March 5, 2013



Hon EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

FILED

MAR 12 2013

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