

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

2019 NY Slip Op 32837(U)

September 25, 2019

Supreme Court, New York County

Docket Number: 151931/2019

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 151931/2019

ANNETTE CHARLES,

MOTION DATE 02/21/2019

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT, ESPLANADE  
GARDENS, INC.

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, the petition is dismissed.

This action arose out of respondent's denial of petitioner's application for succession rights to a Mitchell Lama apartment.

In reviewing respondent's determination, the Court must ascertain whether it was "arbitrary and capricious," and made "without sound basis in reason or regard to the facts."

*Matter of Murphy v. New York State Division of Housing & Community Renewal*, 21 NY3d 649 (2013).

It is well settled that a court's role in reviewing the determination of an administrative agency is limited. The court must merely determine whether there was a rational basis for the agency's determination. If the court finds that the determination had a rational basis, it must sustain the determination. *Matter of Pell v. Board of Education*, 34 NY2D 222 (1974).

Even if a court could have come to a different conclusion than the agency, it is still required to affirm the agency's decision if it finds it to be rational. *Mid-State Management Corp v. New York City Conciliation and Appeals Board*, 112 AD2d 72 (1985).

It has been further held that the interpretation of a statute or regulation by the agency responsible for its enforcement will be upheld so long as the interpretation is not irrational or unreasonable. *Johnson v. Joy* 48 NY2D 689 (1989).

Pursuant to 28 RCNY § 3-02 (p)(3), petitioner must establish the following to prove her right to succeed to the Mitchell-Lama tenancy: (1) she was a family member of the deceased tenant of record, Doris George; (2) she resided with Ms. George at the subject apartment as her primary residence for at least two years prior to Ms. George's death on July 7, 2015; and (3) her name appeared on at least the last two income affidavits that Ms. George submitted to a governmental agency prior to her death. *Matter of Sherman v. New York State Division of Housing & Community Renewal*, 144 AD3d 533 (2016).

In this matter, respondent found petitioner to be a member of Ms. George's family through a shared financial and emotional commitment and interdependence. However, respondent did not find petitioner to be a co-resident of Ms. George during the relevant co-residency period. Respondent also considered the various affidavits from petitioner's friends and family in making its determination.

While respondent considered that petitioner's name appeared on the income affidavits for 2013, 2014 and 2015, noting that the 2015 affidavit was notarized after the death of the tenant of record, respondent found that petitioner falsely certified her income on the 2013, 2014 and 2015 affidavits. Based upon this, respondent determined that such affidavits were not credible to

establish the co-residency period between the deceased tenant of record and petitioner and denied her succession rights.

In its decision, respondent stated that petitioner submitted numerous documents showing a Concourse Village address as her address and other documents which showed different time periods at each address. Respondent also noted that petitioner failed to provide other documents which would prove co-residency such as: voter registration information, Department of Motor Vehicle documents, credit card bills, bank statements solely in petitioner's name at the subject premises, utility bills or insurance documents.

Respondent also noted that "Ms. Charles has demonstrated a capacity for making false statements in significant documents as evidenced by the income affidavits. This lack of truthfulness affects the credibility and reliability of the documents submitted" in petitioner's appeal.

In the case at bar, petitioner has failed to meet her burden showing that the respondent's decision was arbitrary and capricious without a rational basis in the record. This Court is constrained to judge the propriety of respondent's administrative action solely on the reasons cited by respondent. *Matter of Schafer v. DHCR*, 19 Misc3d 1132(A).

"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell, supra*. "A rational or reasonable basis exists for the agency's determination if there is evidence in the record to support its conclusion." *Matter of Shafer v. DHCR, supra*.

In this matter, respondent properly found that petitioner was not entitled to succeed to the subject apartment. Respondent's conclusion was based upon a sound interpretation of the evidence presented and cannot be viewed as arbitrary and capricious.

Therefore, the application is denied and the petition is dismissed.

9/25/2019  
DATE

  
W. FRANC PERRY, J.S.C.  
HON. W. FRANC PERRY, III

CHECK ONE:

- CASE DISPOSED
- GRANTED
- DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

REFERENCE

CHECK IF APPROPRIATE: