

Wright v Carroll

2020 NY Slip Op 30647(U)

February 27, 2020

Supreme Court, New York County

Docket Number: 451789/2019

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

JANET WRIGHT, DUWAYNE WRIGHT
Petitioner,
MOTION DATE 02/26/2020
MOTION SEQ. NO. 001

- v -

LOUISE CARROLL, RIVERBEND HOUSING CO. INC.,
Respondent.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 35
were read on this motion to/for MODIFY ORDER/JUDGMENT

The petitioners bring an action pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), for a judgment annulling the final determination by the New York City Department of Housing Preservation and Development Center ("HPD") denying petitioners' application for succession rights pursuant to the Mitchell-Lama program regarding the apartment at issue. Respondents oppose the instant petition. For the reasons set forth below, the petition is denied.

Background

Janet Wright is the aunt of the former tenant's daughter-in law and Duwayne is her son.1
Petitioners claim that they each shared both a financial and emotional commitment and interdependence with the tenant of record because they each cared for the tenant of record and provided emotional support. Petitioners began residing with the tenant of record in 2011, when Duwayne was a minor.

1 The petition refers to petitioners as niece and grandnephew, however it appears undisputed that the former tenant was not either petitioner's uncle.

Janet and Duwayne Wright appealed the denial of succession rights to the New York City Department of Housing Preservation and Development (“HPD”). A hearing was held at HPD regarding the matter. At that hearing, Hearing Officer Lippa ruled for Riverbend Housing, finding that there was a “lack of credible and reliable evidence” that the tenant of record and petitioners Janet and Duwayne Wright had a relationship based on emotional and financial interdependence. Moreover, Hearing Officer Lippa evaluated the claims by petitioners that they “held themselves out as family” however provided no evidence to corroborate that claim.

Article 78 Standard of Review

Article 78 review is permitted, where a determination was made that “was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed....” CPLR §7803(3).

“Arbitrary” for the purpose of the statute is interpreted as “when it is without sound basis in reason and is taken without regard to the facts.” *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” *Id.* If the court reviewing the determination finds that “[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed.” *American Telephone & Telegraph v State Tax Comm’n* 61 NY2d 393, 400 [1984].

Succession Rights

HPD rules and regulations lay out the requirements for occupants that seek succession rights to a tenant of record's Mitchell-Lama apartment after said tenant permanently vacates the apartment.

First, the occupant must be a qualified family member as defined under 28 RCNY §3-02(p)(2)(ii). Second, that qualified family member must have: (a) resided with the tenant of record in the apartment as a primary residence for a period of at least two years or one year if the applicant is a senior citizen-immediately prior to the tenant of record permanently vacating the apartment; and (b) appeared on the income affidavits for the relevant co-residency period prior to the permanent vacating of the apartment by the tenant or cooperator. 28 RCNY §3-02(p)(3).

An applicant can prove they meet the existence of a qualified family relationship status by showing that their relationship with the tenant fits into one of the rule-enumerated categories or by demonstrating that the tenant and applicant were financially and emotionally committed and interdependent. 28 RCNY §§3-02(p)(2)(ii)(A), (B).

The burden is on the petitioner to prove entitlement succession rights. 28 RCNY §3-02(p)(3).

Discussion

Here, it has been established that petitioners are not family members, as defined by HPD, of the former tenant of record for the apartment at issue. A thorough review of the record establishes that Hearing Officer Lipka had a rational basis for the denial of succession rights.

The cases cited by petitioners are distinguishable from the instant matter. For instance, in *Zenker* the petitioner was able to establish a decades long relationship, an emotional interdependence (tenant of records desire to care for petitioner) and the existence of a joint bank account. 160 AD3d 160 [1st Dept 2018]. The Court agrees with Hearing Officer Lipka's analysis

of the petitioners' and tenant of record's relationship as a "close relationship" however not being one that rises to the level of "sharing household expenses, intermingling funds or maintaining a shared financial commitment and interdependence." Notably, petitioner, Duwayne Wright, was not on the income affidavit for 2014, although he was included on the 2013 affidavit. Moreover, as cited in Hearing Officer Lipa's findings, there is a lack of credible evidence to establish that the petitioners and tenant of record held themselves out as family members. In sum, HPD's denial of succession rights was rational thus not arbitrary or capricious. Accordingly, it is hereby

ORDERED, that the determination by the New York City Department of Housing Preservation and Development in this matter is affirmed.

2/27/2020
DATE


LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE

**HON. LYLE E. FRANK
J.S.C.**