

Gaston v New York City Dept. of Hous. Preserv. & Dev.

2020 NY Slip Op 33415(U)

October 19, 2020

Supreme Court, New York County

Docket Number: 150867/2020

Judge: Carol R. Edmead

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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. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

INDEX NO. 150867/2020

OMARI GASTON,

MOTION DATE 10/25/2020

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT, FRANKLIN
PLAZA APARTMENTS INC.

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 14, 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, it is

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Omari
Saleh Gaston (motion sequence number 001) is denied, and this proceeding is dismissed; and if
is further

ORDERED that that the Clerk of the Court is to enter judgment accordingly; and it is
further

ORDERED that the counsel for Respondents shall serve a copy of this Order with Notice
of Entry within twenty (20) days of entry on counsel for all parties.

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner Omari Saleh Gaston (Gaston) seeks an order to overturn a decision of the respondent New York City Department of Housing, Preservation & Development (HPD) as arbitrary and capricious (motion sequence number 001). For the following reasons, the petition is denied and this proceeding is dismissed.

BACKGROUND FACTS

Gaston currently occupies apartment 12B in a residential “Mitchell-Lama” cooperative apartment building (the building) located at 2075 Second Avenue in the County, City and State of New York. *See* verified petition, ¶¶ 1, 5. Co-respondent Franklin Plaza Apartments Inc. (Franklin Plaza) is the building’s owner. *Id.*, ¶ 10. HPD is the City agency charged with administering the Public Housing Finance Law, which includes the Mitchell-Lama Program. *Id.*, ¶ 6. Apartment 12B’s last tenant of record was Gaston’s grandmother, Myrlene White, who was the unit’s shareholder and proprietary lessee, and who passed away on December 13, 2018. *Id.*, ¶¶ 2, 13; verified answer, exhibit A.

Gaston submitted an application for succession rights to apartment 12B to Franklin Plaza on February 10, 2019. *See* verified answer, ¶ 77; exhibit C. On February 27, 2019, Franklin Plaza issued a decision denying Gaston’s succession rights application. *Id.*, ¶ 78; exhibit D. Franklin Plaza thereafter sent Gaston an amended denial decision on March 11, 2019. *Id.*, ¶ 80; exhibit E. Gaston filed an appeal of Franklin Plaza’s denial decisions with HPD on April 29, 2019. *Id.*, ¶ 81; exhibit F. On October 1, 2019, HPD issued a final determination that upheld Franklin Plaza’s succession rights decision and denied Gaston’s appeal. *Id.*, ¶ 83; exhibit G. The relevant portion of the decision by HPD’s administrative hearing officer (AHO) found that:

“Based on the record before me, I find that Omari Saleh Gaston has failed to prove that he meets the requirements for succession rights.

Mr. Gaston failed to prove that he resided in the subject apartment as his primary residence for two years immediately before he enrolled in college. Thus, he has failed to prove that he meets the requirements for succession rights to the subject apartment according to the HPD rules.

Additionally, although some documents reflect the subject apartment as Mr. Gaston's address during the required co-residency period, other documents were not submitted as proof of the required co-residency, including but not limited to, college documents and bank statements. Furthermore, Mr. Gaston remained registered to vote in Albany, New York during the co-residency period.

Mr. Gaston has also failed to prove that the subject apartment was his primary and permanent residence while he was enrolled in college during the requisite co-residency period, and thus he has failed to prove his entitlement to succession rights.

Finally, Mr. Gaston was not included as an occupant of the subject apartment on the relevant income affidavits. Because there is a lack of documentation and evidence proving Mr. Gaston's primary residence in the subject apartment throughout the co-residency period, his failure to be included as an occupant of the subject apartment on the relevant income affidavits is not excused by the decision in Matter of Murphy v New York State Division of Housing and Community Renewal.

Mr. Gaston is a family member of the tenant; however, he has failed to prove that he . . . has met the other HPD requirements for succession rights to the subject apartment.

No other occupant of the subject apartment has claimed or proved an entitlement to succession rights to the subject apartment.

Mitchell-Lama apartments provide housing for low and middle income individuals and as such they are a limited commodity. HPD has the obligation to insure that only individuals who meet the eligibility requirements reside in these apartments. Omari Saleh Gaston, Nevillene White and John Doe and Jane Doe have failed to prove their entitlement to occupancy rights in the subject apartment. The succession rights appeal is denied and I hereby issue a certificate of eviction against Omari Saleh Gaston, Nevillene White and John Doe and Jane Doe.”

Id.; exhibit G.

Aggrieved, Gaston commenced this pro se Article 78 proceeding on January 23, 2020.

See verified petition. Shortly thereafter, the COVID-19 national pandemic caused the court to suspend its operations indefinitely. Gaston was protected from eviction, however, by the gubernatorial and presidential eviction moratoriums that were imposed and that continue in effect through the end of this year. HPD eventually filed an answer on May 5, 2020. *See* verified answer. This matter is now fully submitted (motion sequence number 001).

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of . . . the facts." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983); *citing Matter of Pell*, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell*, 34 NY2d at 231-232. Further, NYCHA's "construction of its own rules and regulations is entitled to deference and will not be disturbed unless clearly irrational or unreasonable." *Matter of Patel v New York City Hous. Auth.*, 26 AD3d 172, 173 (1st Dept 2006), *citing Matter of Howard v Wyman*, 28NY2d 434 (1971).

Here, Gaston argues that HPD's October 1, 2019 final determination was an arbitrary and capricious ruling because the AHO improperly found that there was insufficient evidence that Gaston had occupied apartment 12B with his grandmother as his primary residence during the two-year, co-residency period that preceded her death. *See* verified petition, ¶¶ 55-64. Gaston asserts that the evidence actually shows that he initially "established residency in [apartment 12B] in May, 2016," and thereafter only left it while he was obliged to be away at school at SUNY Cortland in Cortland County, New York. *Id.*; Gaston aff, ¶¶ 1-22. HPD responds that the AHO's evidentiary findings were justified, that AHO correctly applied the controlling

regulations, and that there was a rational basis for AHO's final determination.¹ *See* respondent's memo of law at 10-13. Gaston replies that the law does not preclude him from claiming apartment 12B as his primary residence even though he was simultaneously enrolled and attending classes at SUNY Cortland. *See* Gribber reply affirmation, ¶¶ 5-14. The court finds for HPD.

The HPD regulations that govern succession rights applications to Mitchell-Lama co-op apartments are set forth in 28 RCNY 3-02 (p) (2), which provides that an applicant must be a "family member" of the former tenant of record; and 28 RCNY 3-02 (p) (3), which provides that the applicant must have: (a) resided with the tenant of record in the apartment as a primary residence for a period of at least two years immediately prior to the tenant of record's death or permanent vacatur; and (b) appeared on the tenant of record's income affidavits for that two-year co-residency period. Here, the AHO found that Gaston was a qualifying "family member" by virtue of being the tenant of record's grandson, but AHO also found that Gaston failed to establish that he had utilized apartment 12B as his primary residence during the two-year, co-residency period preceding his grandmother's death. *See* verified petition, exhibit A. The AHO particularly noted that Gaston's grandmother did not include him on her income affidavits for 2016, 2017 or 2018. *Id.* The AHO further noted that, while some of the other evidence that Gaston presented appeared to support his assertion about co-residency, the bulk of his evidence was deficient because it was demonstrably unreliable or incomplete. *Id.*

As the Appellate Division, First Department, recently reaffirmed, a trial court reviewing an Article 78 petition "may not weigh the evidence, choose between conflicting proof, or substitute its assessment of the evidence or witness credibility for that of the administrative

¹ The court notes that Franklin Plaza submitted opposition to Gaston's petition in which it "concurred with the positions and conclusions set forth in" HPD's answer. *See* Mitchell affirmation, ¶¶ 1-2.

factfinder.” *Matter of Harvey v New York City Dept. of Bldgs.*, 180 AD3d 434, 435 (1st Dept 2020), citing *Matter of Porter v New York City Hous. Auth.*, 42 AD3d 314, 314 (1st Dept 2007). This court declines to do so. Instead, the court finds that HPD’s AHO gave due consideration to all of the evidence that Gaston presented in support of his succession rights application, and that the AHO’s finding was rationally based on that evidence.

Gaston further argues that the AHO misapplied the law by finding that he is not eligible to take advantage of the “student exception” set forth in the Court of Appeals’ decision in *Matter of Murphy v New York State Div. of Hous. & Community Renewal* (21 NY3d 649 [2013]). *See* verified petition, ¶¶ 48-49. In that case, the Court affirmed two lower decisions that upheld the petitioner’s succession rights claim to his mother’s Mitchell-Lama co-op apartment despite the fact that the mother had failed to include petitioner on an income affidavit in one of the two years before the mother vacated the unit. The Court particularly found that:

“Notwithstanding the importance of the income affidavit requirement, given the *overwhelming evidence* of residency provided in this case, and the lack of relationship between the tenant-of-record's failure to file and Murphy's income or co-occupancy, DHCR's decision to deny Murphy succession rights was arbitrary and capricious.” 21 NY3d at 655 (emphasis added).

The “student exception” set forth in *Murphy* therefore only applies where a student/applicant/petitioner overcomes HPD’S income affidavit requirement by presenting a significant amount of alternate convincing evidence that he/she occupied a Mitchell-Lama co-op unit as his/her primary residence during the two-year, co-residency period. A number of First Department cases decided after *Murphy* have declined to allow succession rights applicants to invoke the “student exception” where the alternate evidence was insufficient. *See e.g., Matter of Fitzpatrick v 1199 Hous. Corp.*, 168 AD3d 578 (1st Dept 2019); *Matter of Borekas v New York City Dept. of Hous. Preserv. & Dev.*, 151 AD3d 539 (1st Dept 2017); *see also Matter of*

Grossbard v New York State Div. of Hous. & Community Renewal, 137 AD3d 661 (1st Dept 2016). The court believes that this is such a case. The AHO specifically found that some of Gaston’s alternate evidence indicated that his primary residence was at a different address, and some of it was suspiciously generated only after his grandmother’s death. *See* verified petition, exhibit A. The court credits the AHO’s observations and concludes that the AHO was correct to find that Gaston’s evidence was insufficient to warrant invoking the *Murphy* “student exception.” Therefore, the court rejects Gaston’s argument, and concludes that the evidence in the administrative record provided a rational basis to support HPD’s October 1, 2019 final determination.

Gaston finally argues that HPD’s October 1, 2019 final determination was arbitrary and capricious because “HPD should have held an evidentiary hearing” in light of his status as a “remaining family member.” *See* verified petition, ¶¶ 65-69. HPD responds that its regulations do not provide for such a hearing. *See* respondent’s memo of law at 13-14. Gaston’s reply papers restate his original argument. *See* Gribben reply affirmation, ¶¶ 15-20. The court finds that HPD is correct. The HPD regulation that governs succession rights applications in Mitchell-Lama co-op apartments provides as follows:

“A family member whose application to succeed to a lease or an occupancy agreement has been denied by a housing company may, within thirty (30) calendar days of receipt of the written denial, appeal to the Commissioner of HPD . . . or his or her designee. Such appeal shall include proof of service of a copy of such appeal upon the housing company. The appeal shall briefly set forth the reasons why the family member believes he or she is entitled to occupy the apartment and any errors or erroneous findings he or she believes are contained in the housing company’s determination. The Commissioner or his or her designee shall review the housing company’s determination and any additional information submitted by the applicant and shall issue the final agency decision with regard to the applicant’s application. The only review of this determination is pursuant to Article 78 of the [CPLR].”
28 RCNY 3-02 (p) (8) (ii).

The First Department consistently holds that this regulation satisfies all due process concerns and does not afford a succession rights applicant the right to a hearing. See e.g. Matter of Turner v New York City Dept. of Hous. Preserv. & Dev., 149 AD3d 547, 549 (1st Dept 2017), citing Matter of Pietropolo v New York City Dept. of Hous. Preserv. & Dev., 39 AD3d 406, 407 (1st Dept 2007) (other citation omitted). Therefore, the court rejects Gaston’s alternative opposition argument.

Accordingly, the court finds that Gaston’s Article 78 petition to overturn HPD’s decision should be denied as meritless, and that this proceeding should be dismissed.

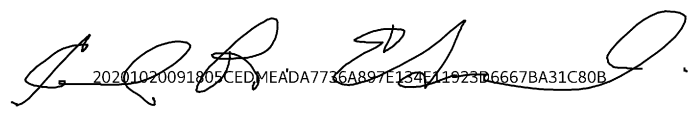
CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Omari Saleh Gaston (motion sequence number 001) is denied, and this proceeding is dismissed; and if is further

ORDERED that that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that the counsel for Respondents shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.


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10/19/20
DATE

CAROL R. EDMOAD, 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"/> OTHER
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