

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

2022 NY Slip Op 32364(U)

July 20, 2022

Supreme Court, New York County

Docket Number: Index No. 153475/2022

Judge: Arlene Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE BLUTH **PART** **14**

*Justice*

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KERMIT MANTILLA,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT, M PLAZA LP,

Respondents.

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**INDEX NO.** 153475/2022

**MOTION DATE** 07/15/2022

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 19, 23

were read on this motion to/for CONSOLIDATE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for ARTICLE 78.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The motion (MS001) to consolidate this action with a pending summary holdover proceeding is denied as moot. The petition (MS002) to reverse a decision by respondent the New York City Department of Housing Preservation and Development (“HPD”) that denied petitioner succession rights is granted.

**Background**

Petitioner seeks succession rights to an apartment previously occupied by his brother before his brother passed away on March 21, 2020. He claims that he relocated from Florida to New York City to care for his brother for the final 19 months of his brother’s life. Petitioner then

applied for succession rights to the apartment. After his application was initially denied, petitioner appealed.

HPD then issued a final determination in December 2021 that denied petitioner's application (NYSCEF Doc. No. 35). HPD noted that petitioner had to prove that "he resided in the subject apartment as his primary residence for at least the one year immediately prior to the date the tenant vacated the subject apartment and was included as an occupant of the subject apartment on the relevant income affidavits or income recertifications. The relevant co-resident period in this case is March 21, 2019 through March 21, 2020" (*id.* at 3).

The determination observed that "The claim that Mr. Mantilla moved to the subject apartment in August 2018 is belied by a February 20, 2019 letter the Social Security Administration and bank statements covering the period of October 19, 2018 through January 18, 2019, all of which were addressed to Mr. Mantilla at a Florida address" (*id.*). HPD argued that a New York driver's license issued in July 2020 and a Social Security Administration letter from July 2020 to New York do not prove the required co-residency period (*id.* at 3-4).

HPD noted that "there is evidence that Mr. Mantilla continued to maintain his connection to his Florida residence during the required co-residency period. Specifically, the tenant and the applicant signed a personal signature card at a bank on March 10, 2020, less than two weeks before the tenant's death. According to this document, the applicant provided a Florida driver license issued in 2013 and valid until 2021 as his primary identification" (*id.* at 4). However, HPD did acknowledge that petitioner was included as an occupant on the income recertifications during the co-residency period (*id.* at 5).

HPD concluded that "I have no reason to doubt that Mr. Mantilla visited and provided care for the tenant in the subject apartment before the tenant's death. However, based on the

evidence before me, I find that Mr. Mantilla has failed to prove that he resided with the tenant in the apartment as his primary residence for at least the one year immediately before the tenant vacated the subject apartment” (*id.*).

Petitioner claims the decision by HPD was arbitrary and capricious. He claims the bank statements he submitted show that his expenses were all from businesses located near the subject apartment. Petitioner also argues that he did not pay New York taxes because his income is too low.

In opposition, HPD observes the apartment at issue is in a Mitchell-Lama development and that its final determination was rational. It argues that petitioner failed to demonstrate that he lived in the apartment as his primary residence during the one-year prior to his brother’s death.

### **Discussion**

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the petition (MS002). The Court observes that petitioner withdrew the portion of motion sequence 001 that sought to consolidate this proceeding with a pending holdover proceeding (NYSCEF Doc. No. 25).

As an initial matter, the Court observes that there are not many areas in dispute in this proceeding. All parties agree that petitioner's brother was a resident of the apartment and that petitioner would be entitled to succession rights if he can show that the apartment was his primary residence for a year prior to his brother's death. It is also undisputed that petitioner was included on the income recertifications for the co-residency period.

Accordingly, this Court must consider the reasons cited for the denial of his succession rights. In this Court's view, HPD's justifications are far too strained and are therefore irrational. HPD points to the fact that petitioner maintained a Florida driver's license during the co-residency period and did not submit any bank statements with the subject apartment listed as petitioner's address (NYSCEF Doc. No. 35 at 4, 5). However, HPD admits that petitioner received letters about SNAP benefits dated April 9, 2019 and May 17, 2019 at the address (*id.* at 4).

The Court finds that HPD's decision simply did not adequately address the fact that petitioner was included on the income recertifications during the co-residency period and petitioner's assertion that he was caring for his brother during the final 19 months of his life. Moreover, HPD's determination disregarded, without a sufficient explanation, the fact that petitioner was given power of attorney over his brother's bank account and that statements from this account show that many purchases were made (all of which were in New York) starting in October 2018 (NYSCEF Doc. No. 27 at 12-13).

### **Summary**

Although petitioner certainly did not ensure that every possible indicator of his address demonstrated that he lived with his brother, that does not justify HPD's determination. Petitioner is not a lawyer, well versed in succession rights. Rather, he came up to New York to care for his

sick brother. And he satisfied the most important step to show that he lived with his brother—his inclusion on the relevant income recertifications. That, along with letters about his SNAP benefits from as early as April 2019 plus his inclusion as power of attorney on a bank statement used primarily in New York City in late 2018, is overwhelming evidence the subject apartment was his primary residence.

HPD's decision makes a mountain out of a molehill by focusing on actions petitioner did not take and isolated incidents suggesting petitioner maintained some connection to Florida. This is not a situation where the person seeking succession rights avoided his obligation to be included on income affidavits. Clearly, this is not a case where petitioner was taking every possible step to prepare for and win a succession rights case. Rather, the record shows that petitioner came to New York and lived with his brother. He responded to various things that came into his brother's home; when the income certification came in, he put his name down because he was living there. He needed SNAP benefits and listed his address. He shopped in the neighborhood.


Did he register to vote? No, but a lot of people don't vote and it would likely not be a priority when someone is taking care of a sick brother and not thinking about building a case for succession. Did he change his driver's license? No, but did he drive a car here? For purposes of identification and even driving, any license is fine. For someone thinking solely about future succession rights, they might take time away from a sick brother to deal with the bureaucracy of changing a driver's license. But the typical layperson will get around to it eventually. These are certainly not dispositive proof that petitioner's primary residence was Florida nor do they contravene the fact that he was on the income recertifications. The fact that is that of course

petitioner had some documents referencing Florida; that is where he lived before he moved to New York to take care of his brother.

Accordingly, it is hereby

ORDERED that the motion (MS001) to consolidate is denied as moot pursuant to the parties' stipulation and granted to the extent that petitioner sought "poor person relief"; and it is further

ORDERED that the petition (MS002) to annul the decision of respondent the New York City Department of Housing Preservation and Development dated December 27, 2021 is granted and petitioner is entitled to succession rights to the subject apartment, and the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents along with costs and disbursements upon presentation of proper papers therefor.

<p><u>7/20/2022</u> DATE</p>	 <hr/> ARLENE BLUTH, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE