

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

2022 NY Slip Op 33595(U)

October 18, 2022

Supreme Court, New York County

Docket Number: Index No. 154431/2022

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART 63M

Justice

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GEORGE KRALIK,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION & DEVELOPMENT, TRI-FAITH HOUSING
COMPANY, INC.

Respondent.

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INDEX NO. 154431/2022

MOTION DATE 08/26/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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, 26, 27, 28

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

Upon the foregoing documents, the instant Petition is resolved as follows:

Petitioner commenced the instant Petition by filing same on May 23, 2022, seeking an Order reversing and annulling the Decision of the New York City Department of Housing Preservation & Development (“HPD”) dated March 16, 2022 (“Decision”) that denied the succession rights appeal of Petitioner George Kralik (“Kralik”) for his home located at 1646 First Avenue, Apt 7G, New York, NY 10028 (the “Apartment”).

As alleged in the Petition, Petitioner is a resident of the Mitchell Lama coop Apartment 7G in the Tri-Faith Housing Company, Inc’s (“Co-op”) building at 1646 First Avenue, New York, New York. Kralik, a senior citizen as defined relevant to this action, was the son of the deceased Tenant of Record, Marta Kralik, who passed away on February 20, 2009. Petitioner alleges that he lived with his mother from 2005 until 2009 and as such needed to show only one year of co-residency in order to claim succession rights in the Apartment. At the time of his mother’s death,

Petitioner submitted a succession application to the Co-op and thereafter paid the maintenance charges on the Apartment.

In an attorney letter dated August 12, 2020, responding to Petitioner's Application for Succession, same was denied based upon alleged inconsistencies regarding Petitioner's residency at 239 East 79th Street, Apt. 11N. Said letter lists the following facts: Kralik appears on the 2006, 2007, and 2008. All three affidavits were apparently signed by Kralik as power of attorney for his mother. Kralik also appears on the income affidavits in prior years where he filed his taxes from a different address. Kralik and his wife, Sarah Kralik are the proprietary lessees and shareholders of Apartments 1A, 11N and 16E in the building located at 239 East 79th Street. Kralik submitted a affidavit to the Supreme Court, New York County in *George Kralik v. 239 East 79th Owners Corp*, Index No. 154698 /2016, on or about May 31, 2016, that states, in reference to the East 79th Street building: "I know about the behavior of the doormen since I spend my life in the Building; in addition to work there, I live in apartment 11N of the Building since November 15, 1984." Kralik has been registered to vote at the Apartment since 1990 and his Driver License, issued March 7, 2012 also indicates the Apartment as his address. Kralik's tax returns for the relevant years, filed jointly with Sarah Kralik, and the Kraliks' car insurance and parking tax exemption list the Apartment as address despite the fact that Sarah Kralik resides in the East 79th Street building. Said letter also attaches three letters from the Co-op's management companies, the latest of which is dated October 24, 2007, informing Petitioner that he does not live in the apartment and that listing himself on the income affidavit does not provide a basis for succession rights, demanding Petitioner's vacatur.

In a letter dated September 10, 2020, Kralik appealed said denial asserting claims of waiver, estoppel and laches. Said letter attaches Petitioner's Board of Elections voting history, tax

return cover pages for the years 2007, 2008 and 2009, Driver's License, Income affidavits for the years 2006, 2007, 2008, bank statements, insurance statements, vehicle registration, application for a parking tax exemption, a letter from Petitioner's tax accountant and a letter dated April 9, 2009 from the Co-op's management company. Petitioner highlights the April 9 letter as confirming that he was a shareholder of the Co-op however the Court notes that the letter specifically accuses Petitioner of not being Petitioner's primary residence as he had allegedly sublet the Apartment. Thereafter, Petitioner supplemented his documentation with the affidavit of Sara Kralik stating that in 2005 Kralik moved to the Apartment, taking all of his personal belongings, has not slept at the East 79th Street apartment since and that the affiant has not visited Kralik at the Apartment since he moved there. Petitioner further submits the affidavit of Agnes Cespany, his office manager and assistant, who states that she helped Petitioner move to the Apartment in 2005 and has come to the Apartment every two weeks since to cook and clean. Petitioner also submits his own affidavit explaining the presence of another couple, Mr. and Mrs. Kajdi, who lived in the Apartment's third bedroom from 2001 until 2010.

In a letter dated July 14, 2021, the Co-op replied to the September 10, 2020 letter, detailing why Kralik's allegations are not credible. Specifically said letter highlights that the tax returns indicate that Sara Kralik lived at the apartment despite her testimony otherwise, that the vehicle related proofs arise from Kralik's garaging of his vehicle at the Co-op since 1989 and not due to his residency. The Co-op further submitted the affidavit of John Weafer, the Co-op's superintendent who stated that Kralik never lived in the Apartment, but sublet same to a woman and her daughter. The Co-op also submitted another letter, dated May 15, 2006, admonishing Petitioner for submitting an inaccurate NYC Income affidavit, stating "YOU DO NOT LIVE AT

1646 FIRST AVENUE.” Thereafter, Petitioner submitted further affidavits attesting that he does live in the Apartment.


In a “Denial of Succession Rights and Certificate of Eviction, dated March 16, 2022, Administrative Hearing Officer Frances Lippa reasoned as follows: Pursuant to 28 RCNY 3-02(p), Petitioner “must prove that he resided in the subject apartment as his primary residence with the tenant for at least the one year immediately prior to the date the tenant permanently vacated the subject apartment and that he was included as an occupant of the subject apartment on the relevant income affidavits.” “the relevant co-residency period in this succession rights appeal is February 20, 2008 through February 20,2009.” Kralik was included as an occupant of the subject apartment on the income affidavits for calendar year 2008 which George Kralik signed on behalf of the tenant.” Since his mother’s death, “Mr. Kralik repeatedly requested succession rights from the housing company.” Lippa noted the April 9, 2009 letter questioning Kralik’s primary residency. Lippa further considered the affidavits of Sara Kralik and the relevant bank statement. Lippa specifically found the NYC parking tax documents, NYS tax documents and car insurance documents lacked credibility as Sara Kralik’s name appeared on them. Documents prior to 2005 such as the voter registration and driver’s license further lacked credibility as they predate the alleged occupancy. An apparently determining factor was the May 24, 2016 affidavit stating “I.know about the behavior of the doormen since I spend my life in the Building; in addition to work there, I live in apartment 11N of the Building since November 15. 1984.” Lippa specifically found that ” Mr. Kratik's admission that he resided in unit 11 N at 239 on East 79th Street since 1984, presumably made without regard to a claim for succession rights to the subject apartment, outweighs documents that reflect the subject apartment as his address and the statements from individuals, including his spouse, who attested to his residency in the subject apartment.” The

decision further provides reasoning that the delay did not prejudice Kralik as he retained use of an apartment that he was not entitled to for a decade.

The applicable standard in an Article 78 proceeding is “whether [the] determination was made in violation of lawful procedure, was affected by error of law or was arbitrary and capricious or an abuse of discretion.” CPLR § 7803(3). Administrative action is arbitrary when it is taken “without sound basis in reason” and “without regard to the facts.” *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974); see *Ward v. City of Long Beach*, 20 N.Y.3d 1042, 1043 (2013). “[T]he Court may not upset the agency’s determination in the absence of a finding...that the determination had no rational basis.” *Mid-State Mgmt. Corp. v. New York City Conciliation and Appeals Bd.*, 112 A.D.2d 72, 76 (1st Dep’t 1985), affirmed 66 N.Y.2d 1032 (1985). While Petitioner may disagree with the weight given to the evidence by AHO Lippa, it cannot be said that the determination had no rational basis. On the second page of the Petition, Petitioner argues “Regulations providing for succession rights to Mitchell-Lama apartments serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household, Notices of Emergency/Proposed Rule Making, NY Reg, Nov. 29, 1989 at 23-29; *Matter of Murphy v. New York State Div. of Hous. & Community Renewal*, 21 NY 3d 649, 977 N.Y.S.2d 161 (2013). A goal of the statutory scheme for succession in Mitchell-Lama apartments is to alleviate the harsh consequences of the death or departure of the tenant for their family members, *Matter of Murphy*.” Allowing Petitioner to remain in the Apartment, when he owns at least three other properties simply does not serve the statutory scheme.

ORDERED that the instant Petition is DENIED in its entirety.

10/18/2022
DATE


LAURENCE L. LOVE, J.S.C.