

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

2023 NY Slip Op 30317(U)

February 1, 2023

Supreme Court, New York County

Docket Number: Index No. 100480/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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SARAH SIEGEL,

Petitioner,

- v -

NEW YORK CITY DEP'T OF HOUSING PRESERVATION
AND DEVELOPMENT, AGUILAR GARDENS INC.

Respondent.

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INDEX NO. 100480/2022

MOTION DATE 01/30/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Respondents' motion to vacate a Court order is granted, and upon consideration of the petition on the merits, the Court denies the petition.

Background

In this proceeding, petitioner seeks to annul a decision denying her claim for succession rights to an apartment formerly occupied by her grandmother. The Court previously granted the petition without opposition (*see* NYSCEF Doc. No. 63). As observed, in the Court notice (NYSCEF Doc. No. 65), the undersigned was never informed that this proceeding (which was commenced as a paper case) had been converted to e-filing. The Court observes that this proceeding was not assigned to this part (at least in NYSCEF) until October 27, 2022 which, unfortunately, was long after the Court had already issued a decision on the petition. Moreover, the order show cause (which was signed by this Court in *May*) was not uploaded to NYSCEF

until October 28, 2022 (NYSCEF Doc. No. 64), again after the Court had already issued a decision. In other words, the Court had no reason to think that this paper case was now on e-filing and had opposition.

In any event, matters should be decided on their merits and the fact is that respondents had, in fact, submitted timely opposition. That constitutes a good reason to consider the case on the merits.

The Underlying Petition

Petitioner claims that she is entitled to succession rights for a Mitchell-Lama apartment where her grandmother lived. Her grandmother passed away on September 1, 2018 and so she had to successfully show that she lived at the apartment (as her primary residence) for the two years immediately preceding her grandmother's death.

Petitioner insists she submitted the proper paperwork, including an income affidavit for 2017. She observes that her father forgot to note on the 2018 income affidavit that her grandmother had passed away but claims that this mistake is excusable.

After considering the submissions from both petitioner and the landlord, the hearing officer noted that there was no dispute that petitioner proved her family relationship (that Rosemary Siegel, the former tenant, was her grandmother) (NYSCEF Doc. No. 14 at 3). However, the hearing office noted that "No income affidavit for calendar year 2016 was provided" (*id.*). He also observed that while petitioner was included on the 2017 and 2018 income affidavits, the 2018 income affidavit was notarized after the grandmother had already passed away (*id.*). The hearing officer also observed that the 2018 income affidavit (submitted by petitioner's father) did not mention that his mother had passed away (*id.*).

The hearing officer observed that while petitioner (who was a college student at the time) had tuition bills sent to her at the subject apartment, she did not submit other key documents to show that she lived with her grandmother (*id.* at 4). The hearing officer pointed to the fact that petitioner did not submit DMV records, voter registration documents, bank statements, medical or insurance records or even a W-2 for 2017 (a year in which she apparently earned income over \$3,600) (*id.*).

The hearing officer also observed that in an email from petitioner's father in June 2020, he noted that a couple of these documents did not reflect that petitioner lived in the apartment (*id.*).

Respondent New York City Department of Housing Preservation and Development ("HPD") insists that the hearing officer's decision was rational and should not be disturbed. It maintains that the documentation submitted by petitioner was not sufficient to prove that the apartment was her primary residency during the subject time period. HPD observes that none of the documents that were dated during the two-year period established that the apartment was her primary residence as of September 1, 2016. It claims that the earliest document was a tuition bill from December 12, 2016 and so, even if these documents could show the apartment was petitioner's primary residence (which HPD does not concede), petitioner still cannot meet her burden.

The other respondent, Aguilar Gardens Inc. (the landlord), makes similar arguments that petitioner simply failed to meet her burden for succession rights to the apartment.

Discussion

"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. Succession is in the spirit of the statutory scheme, whose goal is to facilitate the availability of affordable housing for low-income residents and to temper the harsh consequences of the death or departure of a tenant for their ‘traditional’ and ‘non-traditional’ family members.

In the event that Mitchell–Lama tenants vacate an apartment, their co-occupants are not automatically entitled to succeed to the tenancy. Under the applicable regulations, succession applicants must make an affirmative showing in order to establish their eligibility. Specifically, they must demonstrate that they qualify as family members or were otherwise sufficiently interdependent with the tenant-of-record; that the unit at issue was the applicant's primary residence during the two years immediately prior to the tenant's vacatur; and that they were listed as co-occupants on the income affidavits filed for the same two-year period” (*Matter of Murphy v New York State Div. of Hous. and Community Renewal*, 21 NY3d 649, 653, 977 NYS2d 161 [2013] [internal quotations and citations omitted]). A court considering a determination about whether an applicant is entitled to succession rights must consider whether that decision was “affected by an error of law, and was . . . irrational, unreasonable, or arbitrary and capricious” (*Pietropolo v New York City Dept. of Hous. Preserv. and Dev.*, 39 AD3d 406, 406 [1st Dept 2007]).

Here, the Court denies the petition and dismisses this proceeding. The Court is unable to find that the determination by the hearing officer was arbitrary or capricious. The hearing officer’s conclusion that petitioner did not meet her burden to entitle her to succession rights was entirely rational. He raised valid concerns about the fact that no 2016 income affidavit was included and that the 2018 income affidavit was notarized after petitioner’s grandmother had


passed away. That income affidavit (NYSCEF Doc. No. 29) is dated April 30, 2019 and did not mention that Rosemary Siegel passed away in September 2018.

The Court recognizes petitioner’s assertion that her father (who handled the income affidavits as her grandmother’s power of attorney) was not an attorney and unaware that he was supposed to indicate that his mother had already passed away. If that were the only issue, then, potentially, petitioner may have had a stronger claim to succession rights. But the hearing officer’s determination was based on many additional reason and this Court cannot disturb that determination simply because petitioner disagrees with it. The fact is that petitioner did not show that the subject apartment was her primary residence for the two years prior to her grandmother’s death. Documents that could have helped her prove this point—such as a driver’s license, voter registration or insurance documents were not submitted. The hearing officer was entitled to deny petitioner’s application under these circumstances.

Accordingly, it is hereby

ORDERED that the motion by respondent New York City Department of Housing Preservation and Development to vacate this Court’s order is granted; and it is further

ORDERED that upon consideration of the merits of the underlying petition, the Court denies the petition and dismisses this proceeding; the Clerk is directed to enter judgment accordingly in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

<p><u>2/1/2023</u> DATE</p>	 <hr/> ARLENE P. 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