

**Batts v Carrion**

2024 NY Slip Op 30640(U)

March 1, 2024

Supreme Court, New York County

Docket Number: Index No. 451560/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 09M

Justice

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KELVIN BATTS,

Plaintiff,

- v -

ADOLFO CARRION, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, LINDEN PLAZA PRESERVATION, L.P.

Defendant.

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INDEX NO. 451560/2023

MOTION DATE 07/06/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

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

Upon the foregoing documents, the motion by Petitioner Kelvin Batts ("Mr. Batts") for an Order: (1) pursuant to CPLR § 7803 nullifying and vacating the Final Determination of Respondent New York City Department of Housing Preservation and Development ("HPD") dated February 23, 2022 (the "Final Determination") as arbitrary and capricious; (2) nullifying and vacating the Certificate of Eviction issued by HPD in the Final Determination; and (3) pursuant to Article 81 and 83 of the CPLR, awarding costs and disbursements to Mr. Batts, is granted.

Vacatur of the Final Determination and Certificate of Eviction

Mr. Batts seeks to nullify and vacate HPD's Final Determination, which denied him the right to succeed his long-term domestic partner, Ms. Lindella Summers ("Ms. Summers"), in tenancy of a Mitchell-Lama apartment located at 790 Eldert Lane, Apartment 3P, Brooklyn, New York 11208 (the "Subject Premises"). Respondents HPD and Linden Plaza Preservation, L.P. oppose the request.

The standard of review of an agency determination in an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination or whether the determination is arbitrary and capricious (Matter of Gilman v. New York State Div. of Housing and Community Renewal, 99 NY2d 144 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (Peckham v. Calogero, 12 NY3d 424 [2009]; see also 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]). When an agency determination is supported by a rational basis, this Court must

sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v. Calogero*, 12 NY2d at 431).

Co-occupants seeking to establish their right to succeed a tenancy under 28 RCNY 3—02(p) 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. & Community Renewal*, 21 NY3d 649, 653 [2013]). The two-year period is reduced to one year for senior citizen applicants (28 RCNY 3-02[p][3]).

As to the first requirement, 28 RCNY 3-02(p)(2)(ii)(B) provides factors to be considered in determining succession rights to non-traditional family members; it states, in pertinent part:

***Although no single factor shall be solely determinative***, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed may include, without limitation such factors as listed below: (i) longevity of the relationship; (ii) sharing of or relying upon each other for payment of household or family expenses and or other common necessities of life; (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc; (iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.; (v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.; (vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions; (vii) regularly performing family functions, such as caring for each other or each other’s family members, and/or relying upon each other for daily family services; (viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

(28 RCNY 3-02[p][2][ii][B] [emphasis added]).

Accordingly, in determining the interdependency of the tenant of record and the applicant, the totality of the circumstances contemplated by 28 RCNY 3-02 [p][2][ii][B] must be considered. Furthermore, the Court of Appeals has recognized that “...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.” (*Matter of Murphy*, 21 NY3d 649, 653 [“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.”] [internal citations omitted]).

While it is undisputed that Mr. Batts was not included on Ms. Summers’ income affidavit for the reporting period immediately prior to her death on February 12, 2021, this fact alone was insufficient to deny Mr. Batts’ claim, as “[t]here are circumstances... where the evidence of primary residence is so overwhelming that the absence of an income affidavit may be overlooked” (*Matter of Borekas v. New York City Dept. of Hous. Preserv. & Dev.*, 151 AD3d 539, 539-540 [2017]).

Here, the Final Determination acknowledged that Mr. Batts submitted documents issued by the Human Resources Administration addressed to him at the Subject Premises. The Subject Premises is the only address for Mr. Batts appearing therein for nearly a decade, dating back to at least April 15, 2015. HPD’s reliance on a single “lapse notice” issued by AARP, a private life insurance company, that was addressed to Mr. Batts at a residence on Loring Avenue in Brooklyn was misplaced.<sup>1</sup> Notably, the policy ultimately issued by AARP is addressed to Mr. Batts at the Subject Premises.<sup>2</sup> All other documents produced by Mr. Batts in support of his claim were addressed to him at the Subject Premises.

Further, Mr. Batts submitted a sworn statement in which he averred that he lived with Ms. Summers for twenty-six (26) years; that he “helped her with the bills [and] lived as a couple”; and that “for the last four years of her life she had a stroke [and he] took care of her.” Although the Final Determination acknowledges Mr. Batts’ writing, it provided no explanation for wholly disregarding it in rendering the Final Determination. Consequently, its finding that “there is no independent, credible and reliable evidence” substantiating Mr. Batts’ claim is erroneous as a matter of law and fact and is therefore arbitrary and capricious. Accordingly, the Final Determination is vacated.

### **Costs and Disbursements**

Mr. Batts requests an award of costs and disbursements under Articles 81 and 83. CPLR § 8101 provides for costs where a judgment is entered against a party; such costs are fixed by CPLR § 8201 and cannot be varied by this Court. CPLR § 8301(a) provides for taxable disbursement in actions. “Unlike costs, disbursements cannot be recovered without proof that expenses were actually incurred.” *See* CPLR § 8301. The Court notes that Mr. Batts is represented by the Urban Justice Center, and that pursuant to CPLR 1101(e), his costs, fees and expenses relating to this proceeding have been waived. Mr. Batts does not submit documents evidencing actual out-of-pocket disbursements made in connection with this action and in any event, such disbursements are *de minimus*. Accordingly, although Mr. Batts is entitled to one bill of costs as taxed by the County Clerk, the Court declines to award him disbursements.

Accordingly, it is hereby

**ORDERED** that the petition is granted to the extent of vacating the HPD determination dated February 23, 2022 as arbitrary and capricious; and it is further

<sup>1</sup> *See* NYSCEF DOC. 28, notice dated October 12, 2020.

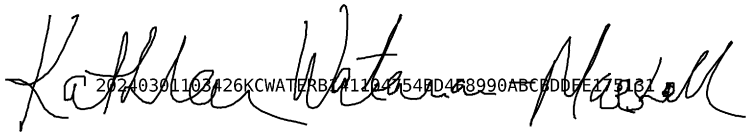
<sup>2</sup> *See* NYSCEF DOC. 28, policy dated November 16, 2020.

**ORDERED** that the Certificate of Eviction issued in connection with the HPD determination dated February 23, 2022 is hereby vacated; and it is further

**ORDERED** that Mr. Batts is hereby granted succession rights and an appropriate lease for the subject premises within 14 days of notice of entry of this decision and order; and it is further

**ORDERED** that pursuant to CPLR § 8101, Mr. Batts is entitled to one bill of costs as taxed by the Clerk of the Court incurred in connection with the within action and; it is further

**ORDERED** that any argument not expressly addressed herein has nevertheless been considered and is hereby denied.



3/1/2024  
DATE

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KATHLEEN WATERMAN-MARSHALL,  
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" 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"/>	REFERENCE