

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

2024 NY Slip Op 30974(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 158694/2023

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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MARC E. EDWARDS,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING,  
PRESERVATION AND DEVELOPMENT, ESPLANADE  
GARDENS, INC.

Respondent.

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INDEX NO. 158694/2023

MOTION DATE 03/20/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for ARTICLE 78.

The petition to annul a determination by respondent the New York City Department of Housing Preservation and Development (“HPD”) is denied.

**Background**

This proceeding concerns petitioner’s request to succeed to a Mitchell-Lama apartment formerly rented by his cousin.

HPD’s determination noted that petitioner is seeking succession rights to an apartment in which his cousin used to live (NYSCEF Doc. No. 3 at 3). The cousin told the housing company (respondent Esplanade Gardens, Inc.) that he was leaving the unit by the end of July 2022 (*id.*).

HPD noted that “In order to prove his entitlement to succession rights, Marc Edwards (hereinafter also referred to as the applicant) must prove that he is a family member of the tenant according to the HPD definitions, that he resided with the tenant in the subject [sic] as his primary residence for at least the one year immediately prior to the date the tenant permanently

vacated the apartment and that he was included as an occupant of the subject apartment on the relevant income affidavits” (*id.*).

Because a cousin is not a family member under the relevant regulations, petitioner had to “prove that he and the tenant shared a financial and emotional commitment and interdependence according to the criteria set forth at 28 RCNY 3-02(p)(2)(ii)(B)” (*id.*). HPD concluded that:

“There is no evidence that the tenant and Mr. Edwards shared or relied on each other for the payment of household or family expenses and or other common necessities of life. There is no evidence that the tenant and Mr. Edwards formalized legal obligations to each other in any way, including wills, powers of attorney, health care proxies or otherwise. There is no evidence that the tenant and Mr. Edwards performed family functions, such as caring for each other's extended family members and/or relying upon each other for daily family services. There is no evidence that the tenant and Mr. Edwards intermingled their finances in any way, including bank accounts and credit cards. In fact, Mr. Edwards maintained a checking account in his own name in late 2020 and during 2021 and 2022” (*id.* at 4).

HPD noted that the former tenant used to work for the State Department and that the record showed he had a residence in Washington, D.C. and filed tax returns in Virginia (*id.* at 5-6). It noted that petitioner did not show that he lived with his cousin in the apartment (*id.* at 6).

Petitioner argues that this decision was arbitrary and capricious. He contends that while his cousin was working overseas for the State Department, he took care of the apartment. Petitioner insists that he and his cousin grew up together, that he paid the maintenance while his cousin was away and that they had had long-standing close and familial relationship.

In opposition, HPD insists that petitioner simply did not show that he was a qualifying family member to take over the apartment from his cousin. It emphasizes that petitioner did not show that he and his cousin relied upon each other for the payment of household expenses or necessities. HPD observed that petitioner did not produce any documents to show, for instance, that he was his cousin's health care proxy or other similar documents to substantiate their legal

obligations to one another. HPD emphasizes that petitioner maintained his own bank account and that the record shows that the tenant was mainly living out of state during the majority of the time petitioner lived in the apartment.

In reply, petitioner insists that HPD is attempting to rewrite the rules regarding non-traditional family relationships. He argues that there is no rigid test for what constitutes a sufficient relationship for purposes of succeeding to a Mitchell-Lama apartment. Petitioner emphasizes that he was on the income affidavits and that HPD's decision was irrational.

### Discussion

“In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. Further, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise” (*Matter of Peckham v Calogero*, 12 NY3d 424, 431, 883 NYS2d 751 [2009] [internal quotations and citations omitted]).

The Court denies the petition as the Court finds that HPD's determination was rational. The fact is that the circumstances of this case are unique. There is no dispute that because petitioner and the former tenant were cousins, they are not considered traditional family members under the Mitchell-Lama succession rules. “[A] person seeking to succeed to a rent-regulated apartment based upon a nontraditional family relationship must establish both emotional and financial commitment and interdependence” (*Fort Washington Holdings, LLC v Abbott*, 119 AD3d 492, 990 NYS2d 509 [1st Dept 2014]).

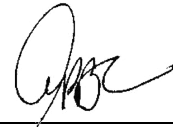
Here, HPD noted that the former tenant readily admitted that he largely lived elsewhere and that petitioner was tasked with making sure the apartment was looked after. HPD rationally concluded that this was not the type of emotional and financial commitment required. “[F]inancial interdependence is an important factor considered in determining whether parties were in a family like relationship” (*Borekas v New York City Dept. of Hous. Preserv. and Dev.*, 151 AD3d 539, 540, 55 NYS3d 49 [1st Dept 2017]). As HPD stressed, there was no evidence of any intermingling of finances that could show a familial relationship required in order to succeed to the apartment.

Instead, it seems that the former tenant let petitioner stay at the apartment while he worked around the world and, at times, lived near the State Department in Washington, D.C. Although petitioner may have ensured that the rent was paid while the tenant was away, HPD rationally observed that “These actions are not proof that the tenant and the applicant were family members through a shared financial and emotional commitment and interdependence. In fact, these actions are indicative of a landlord/tenant type relationship between the tenant and the applicant” (NYSCEF Doc. No. 17 at 5). The Court agrees; it seems as though petitioner was sort of a house sitter or subletter while the tenant was away.

The Court is simply unable to disturb HPD’s findings on this record. While petitioner certainly disagrees with HPD’s conclusions, HPD rationally evaluated the relevant factors and concluded that the relationship between petitioner and the former tenant did not grant petitioner succession rights to the subject apartment.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements upon presentation of proper papers therefor.

<u>3/25/2024</u> DATE			 ARLENE P. BLUTH, 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"/> 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"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE