

Matter of Calise v Carrion

2025 NY Slip Op 30928(U)

March 20, 2025

Supreme Court, New York County

Docket Number: Index No. 156475/2024

Judge: Verna L. Saunders

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This opinion is uncorrected and not selected for official publication.

By letter dated January 4, 2024, respondent East Midtown Plaza Housing Company Inc. (“East Midtown Plaza”) denied petitioner’s application for succession to the subject apartment, pursuant to 28 RCNY § 3-02(p). The letter indicates that, based on the Mitchell-Lama rules, succession rights may be granted only to a tenant/cooperator’s family member who has resided with the tenant/cooperator in the subject apartment as their primary residence for the two years immediately preceding the tenant/cooperator’s permanent vacating of the apartment and continues to reside in the subject apartment as their primary residence. In its denial, East Midtown Plaza stated, “[s]uccession rights cannot be granted since proof of co-residency and [p]rimary residency has not been established between Joseph Calise and Mary Ann Mastrocco, Augustus Mastrocco. Augustus Mastrocco’s address as reported on his death certificate is 61A Old Oak Lane, Levittown Hamlet, NY11758.” The denial letter also indicated that East Midtown Plaza would pursue a proceeding against petitioner at HPD for possession of the apartment. Petitioner appealed the denial of his succession application. On May 29, 2024, HPD denied petitioner’s appeal and issued a certificate of eviction against petitioner. HPD found that petitioner failed to submit sufficient, credible and reliable evidence to prove that tenant, Mary Ann Mastrocco, maintained and resided in the subject apartment as her primary residence after March 1, 2018.

Petitioner argues that HPD improperly denied his succession application, finding that he did not prove co-residency with his mother and that he failed to provide sufficient evidence of tenant’s permanent vacatur from the subject apartment. Petitioner contends that he resided with his mother at the subject apartment as their primary residence from January 2019 until February 2022. While he acknowledges that the Mastroccos rented an apartment in Levittown, New York in March 2018, he maintains that this was a secondary residence for weekends, vacations, and to use for easier access to medical appointments. Tenant filed her New York State tax returns from the subject apartment from 2019 through 2022, noting the subject apartment as her primary residence (NYSCEF Doc. No. 6, *tax returns*).

Respondents Adolfo Carrion, Jr., as Commission of HPD, interposed an answer in this special proceeding (NYSCEF Doc. No. 11, *answer*). Respondent argues, by memorandum of law, that HPD’s denial of petitioner’s succession rights appeal was rational and supported by evidence on the record because petitioner failed to establish that tenant co-resided in the subject apartment as her permanent residence for at least two years immediately before she permanently vacated the unit in February 2022. Respondent also argues that petitioner is not entitled to an evidentiary hearing, nor is he entitled to attorney’s fees (NYSCEF Doc. No. 21, *memorandum of law*).

East Midtown Plaza submits a separate answer and memorandum of law in this proceeding, similarly arguing, *inter alia*, that HPD’s denial of the appeal challenging the denial of petitioner succession application had a rational basis given the absence of documentation as to when tenant vacated the apartment and evidence suggesting that tenant resided at the Levittown apartment as her primary residence since March 2018 (NYSCEF Doc. Nos. 23, *answer*; 24, *memorandum of law*).

A judicial review of an administrative determination is limited to whether said determination was arbitrary and capricious or made without a rational basis in the administrative

record (see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). It is well-settled that, in reviewing an agency determination, the court may not substitute its own view of the evidence for that of the agency, even if the court would have reached a different result (see *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). A determination by HPD regarding succession rights must be upheld if there is some rational basis in the record for said determination (see *Matter of Halcomb v New York City Dept. of Hous. Preserv. & Dev.*, 187 AD3d 673, 673 [1st Dept 2020]; *Matter of Broussard v New York City Dept. of Hous. Preserv. & Dev.*, 170 AD3d 563, 563 [1st Dept 2019]).

28 RCNY § 3-02(p)(3) provides that, to be awarded succession rights to an apartment, an applicant must demonstrate, among other things, (1) that he or she is a family member, (2) that he or she co-resided with the tenant/cooperator of record for a period of not less than two years prior to the tenant's permanent vacating of the apartment, and (3) that he has appeared on the income affidavits for at least two consecutive annual reporting periods prior to the tenant/cooperator's vacatur.

Moreover, “[t]o establish primary residency, a family member applicant must submit documentation, such as a motor vehicle registration, driver’s license, voter registration card, insurance policy, or any other document filed with a public agency, that includes the apartment’s address (see 28 RCNY 3–02[n][4][i]–[ii]).” (*Mantilla v New York City Department of Housing Preservation and Development*, 230 AD3d 1006, 1006 [1st Dept 2024].)

The petition is denied. This court finds that there was a rational basis for HPD to affirm the denial of petitioner’s succession rights application. Petitioner relies, predominantly, on tax return records filed by tenant from 2019 through 2022, noting the subject apartment as tenant’s primary residence. However, as respondents note, tenant’s Resident Income Tax Return for 2022 indicates that she resided in NYC for twelve months in 2022, which is inconsistent with petitioner’s assertion that tenant vacated the subject apartment in March 2022. There is a lease executed by tenant and Augustus Mastrocco since March 2018 for an apartment in Long Island, the same address identified in Augustus Mastrocco’s death certificate in 2020. Furthermore, petitioner failed to proffer sufficient corroborating proof establishing that he co-resided with tenant in accordance with 28 RCNY § 3-02(p)(3). As such, the petition is denied.

Furthermore, HPD afforded petitioner all the due process to which he was entitled under the circumstances to address his claim of a protected property interest; thus, petitioner’s request for an evidentiary hearing is denied (see *Matter of Cadman Plaza N., Inc. v N.Y.C. Dep’t of Hous. Pres. & Dev.*, 290 AD2d 344, 344-345 [1st Dept. 2002]; *Matter of Pietropolo*, 39 AD3d 406, 407 [1st Dept 2007]; *Matter of Hochhauser v City of N.Y. Dep’t of Hous. Pres. & Dev.*, 48 AD3d 288, 288 [1st Dept. 2008]). The request for attorney’s fees is likewise denied. Accordingly, it is hereby

ORDERED that the petition is denied, and the application dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon respondents.

This constitutes the decision and order of this court.

March 20, 2025



HON. Verna L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	