SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER **PART** 08
Justice

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SHANNON BROWN

Petitioner,

- v -

EAST MIDTOWN PLAZA HOUSING CO., INC.,

Respondent.

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INDEX NO. 157488/2024

MOTION DATE 08/31/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13

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

Upon the foregoing documents, this motion is decided as follows. In this special proceeding brought pursuant to CPLR Article 78, petitioner Shannon Brown ("Brown") seeks to challenge a determination by non-party New York City Department of Housing Preservation and Development ("HPD") which denied Brown succession rights to an East Midtown Plaza Housing Company, Inc. ("East Midtown") apartment in a determination dated April 10, 2024. Brown seeks an annulment of the determination and an order directing HPD to grant her succession rights. East Midtown opposes and argues that the petition is procedurally defective as it fails to name HPD as a necessary party and was commenced beyond the statute of limitations, and that the HPD determination was not arbitrary and capricious. For the reasons that follow, the petition is denied.

Facts

The relevant facts are as follows. On August 5, 2014, Angie Sharp ("Sharp"), petitioner's great grandmother, was deemed to have permanently vacated an apartment at 400 Second Ave, Apt. #21H, New York, NY 10010 (the "Subject Premises"). The Subject Premises is a Mitchell-

Lama cooperative housing community overseen by the HPD. Brown moved into the Subject Premises sometime prior to the vacatur and continued to occupy it after Sharp vacated it.

On November 13, 2017, Brown submitted a succession application but failed to provide supporting documents. On April 3, 2019, East Midtown denied Brown's succession application. On April 9, 2019, HPD sent a letter to Brown advising her that she could appeal the decision by submission of additional documentation on or before May 15, 2019. Brown's uncle Carl Sharp sent letters, received by HPD on April 11 and May 9, 2019, requesting additional time to appeal. HPD granted the request and extended the time to file the appeal until June 15, 2019. Brown did not file an appeal by that date.

On February 6, 2024, HPD sent a letter to Brown extending her time to appeal to March 4, 2024. Brown failed to appeal by the deadline and claims that she never received the letter. On April 10, 2024, HPD upheld East Midtowns denial of succession rights and issued a certificate of eviction (the "Determination").

Discussion

At the outset, respondent argues that the petition must be dismissed for failure to name HPD as a necessary party and because the petition was filed beyond the statute of limitations.

Under CPLR 1001(b), when a necessary party "has not been made a party and is subject to the jurisdiction of the court, the court shall order him summoned." HPD is a necessary party subject to the jurisdiction of the court.

Joinder is preferable to dismissal for failure to join a necessary party where possible, and "bringing necessary parties into the litigation whenever possible has been the common thread of New York's joinder statutes" (*Matter of Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d 452, 458 [2005]). Expiration of the statute of limitations

does not preclude the Court from asserting jurisdiction and summoning a necessary party (*see Windy Ridge Farm v Assessor of Town of Shandaken*, 11 NY3d 725, 727 [2008]; *Matter of Bronx Coalition Against Upzoning Inc. v New York City Dept. of City Planning*, 233 AD3d 432, 432 [1st Dept 2024]). Therefore, failure to name HPD as a necessary party is not a basis upon which to dismiss the instant petition.

CPLR 217 states in the relevant part that "[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced *within four months after the determination* to be reviewed becomes final and binding upon the petitioner…" (emphasis added). HPD's Determination was issued on April 10, 2024, giving Brown until August 10, 2024 to commence the instant proceeding.

Brown has provided evidence that the petition was originally filed on August 10, 2024, but was deleted due to a filing error. Brown then refiled the petition on August 14, 2025. However, Brown does not explain what the filing error was or what files were originally uploaded. East Midtown argues that the initial filing does not toll the statute of limitations. Brown is silent on this issue. Here, the Court declines to dismiss the petition on these grounds or determine whether the deletion tolled the statute of limitations and will decide the petition on the merits.

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (*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] [emphasis removed]; *see also Matter of Colton v. Berman*, 21 NY2d 322, 329 [1967]).

"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell*, 34 NY2d at 231; *see also Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *Matter of Ferrelli v State of New York*, 226 AD3d 504, 504 [1st Dept 2024]). If the agency determination is supported by a rational basis, it must be upheld even if a different conclusion could have been reached by the court (*Matter of Ferrelli*, 226 AD3d at 504; *see also Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]).

In order to be eligible for succession rights to a Mitchell-Lama apartment, the applicant must prove:

> [T]hat 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]).

While Brown is Sharp's great-granddaughter, a great-grandchild is not one of the enumerated family members as set forth in 28 RCNY § 3- 02(p)(2)(ii)(A), which includes the tenant's "husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law". Pursuant to 28 RCNY § 3- 02(p)(2)(ii)(B), a non-enumerated individual can prove a familiar relationship with the tenant by showing "emotional and financial commitment and interdependence between such person and the tenant / cooperator." Subsections (a)-(h) list criteria to be considered to determine if such a relationship exists.

Using the criteria set forth in 28 RCNY 3-02(p)(2)(ii)(B), HPD's Determination found that Brown failed to prove such a relationship existed. Brown did not provide any evidence that she had intermingled finances or formalized legal obligations with Sharp or that they "relied on each other for payment of household or family expenses or necessities. Nor is there any evidence that the tenant and the applicant relied on each other for daily family services." Sharp's bank account designated Carl Sharp with power of attorney rather than Brown. HPD found that spending time together and having a "warm relationship" was not the equivalent of having a family relationship pursuant to the HPD rules which require "both an emotional and financial commitment and interdependence." Failure to prove the familiar relationship is a reasonable basis on its own to deny of the application.

HPD also found that Brown failed to prove that the unit was Brown's primary residence for two years preceding Sharp's vacatur. On the application for succession rights, Brown certified that Sharp vacated the apartment on December 31, 2024. However, East Midtown provided evidence that as early as August 5, 2014, Sharp was receiving letters from the National Retirement Fund to an address in Jacksonville Florida. Using either August 5, 2014 or December 31, 2024, as the date of vacatur, Brown failed to provide evidence that the apartment was her primary residence for the relevant time period.

Brown argues that the HPD determination was arbitrary and capricious and "based upon a rebuttable (sic) presumption that occurs when an applicant is not listed on the relevant income affidavits for the preceding two years. The court disagrees with petitioner. The Determination specifically states that "Brown was included as an occupant of the subject apartment on the 2012 and 2013 income affidavits." and "[i]nclusion on the relevant income affidavit is not a sufficient basis upon which to grant succession rights".

The Determination therefore found that even though Brown was listed on the 2012 and 2013 income affidavits, she failed to prove the other succession requirements for co-residency and denied her appeal.

Brown argues that she satisfied familial relationship when she changed her voter registration and provided a Verizon bill with her name addressed to the Subject Premises. Brown further argues that she established a legal relationship between herself and Sharp via an Assignment and Assumption of Occupancy Agreement. The Court cannot consider the additional evidence provided by Brown as "the reviewing court is limited to consideration of evidence and arguments raised before the agency when the administrative determination was rendered" (*333 E. 49th Partnership, LP v New York State Div. of Hous. and Community Renewal*, 165 AD3d 93, 99 [1st Dept 2018]; *see also Featherstone v Franco*, 95 NY2d 550, 554 [2000]). Because Brown failed to submit evidence to HPD proving either her familiar relationship or co-residency of the apartment, HPD was rational in their Determination.

Brown's argument that there was an unreasonable delay in the determination which prejudiced her is unavailing. HPD gave Brown numerous opportunities by extending her deadline to appeal and provide additional documentation, which Brown ignored. Based on the foregoing, the petition is denied.

Conclusion

Accordingly, it is hereby

ORDERED that the petition is dismissed, and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

6/25/2025
DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE