

**Matter of Amoah v Carrion**

2025 NY Slip Op 33290(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 452515/2024

Judge: Lynn R. Kotler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



Amoah applied for succession rights but was denied by KEITH OWNER, LLC (the “Housing Company”) in a decision dated August 16, 2022. On September 8, 2022, Amoah submitted an appeal of the Housing Company decision to HPD. On May 15, 2024, Administrative Hearing Officer Frances Lippa (“A.H.O. Lippa”) denied the appeal. The determination found that:

[T]he applicant has failed to prove when the tenant vacated the subject apartment and therefore, she has necessarily failed to prove the required co-residency with the tenant... Furthermore, even accepting the claim that the tenant vacated the subject apartment on February 3, 2020, the applicant has failed to prove that she resided in the subject apartment as her primary residence from February 3, 2018, through February 3, 2020.

The instant petition was filed on September 12, 2024.

### Discussion

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]).

28 RCNY § 3-02 (p) (3) requires that the individual applying for succession rights prove that the apartment was their primary residence for two years preceding the vacatur of the previous tenant of record (*see also Yunayeva v Kings Bay Hous. Co., Inc.*, 94 AD3d 452, 453 [1st Dept 2012]).

Amoah argues that the HPD determination was arbitrary and capricious and without a rational basis as she submitted evidence to prove the following: 1) when Mingle vacated the Subject Premises and 2) that it was her permanent residence. To support her claim, Amoah submitted certified tax documents, New York State ID card listing the Subject Premises as her residence, letters to management showing that the landlord was aware Amoah was living at the Subject Premises, signed and notarized statements from Amoah and Mingle, and a notarized statement from her accountant stating that there was an error on the certified tax returns as a result of a mistake by his office. Amoah also provided an affidavit from Mingle stating that she vacated the Subject Premises in February of 2020.

HPD argues that it was rational in its determination to deny petitioner succession rights because the evidence submitted by petitioner was insufficient to prove that Mingle permanently vacated the subject apartment in February of 2020 and Mingle's 2020 tax return and 2019 W-2 reflect a primary residence of 131 W Kingsbridge Road, Bronx, New York, 10468.

Here, HPD was rational in finding that Amoah failed to establish when Mingle vacated the apartment. HPD is "entitled to consider the lack of objective documentary evidence supporting petitioner's claim, inconsistencies among the documents that were submitted, and the fact that petitioner provided an address other than the subject apartment as his place of residence

on a tax return filed during the relevant time period” (*Matter of Hochhauser v City of N.Y. Dept. of Hous. Preserv. & Dev.*, 48 AD3d 288, 289 [1st Dept 2008]; see also *Matter of Quan v New York City Dept. of Hous. Preserv. & Dev.*, 70 AD3d 528 [1st Dept 2010]).

Amoah provided no other documentation, such as “Department of Motor vehicles license or identification card, voter registration documents, insurance documents, medical documents, utility bills, credit card statements, or general 2020 correspondence” as evidence that Mingle resided in the Subject Premises through February 2020. In the HPD determination, A.H.O. Lippa considered the statement from the accountant regarding the alleged error in primary residence on the tax return but found that the conflicting information and lack of other evidence of Mingle’s continued residence at the Subject Premises was insufficient to prove when Mingle vacated the apartment.

Assuming, *arguendo*, that Amoah had established February 2020 as Mingle’s date of vacatur, she still failed to prove that she had resided in the Subject Premises for the required prior two-year co-residency period. The HPD determination states that Amoah failed to produce “bank statements as proof of the required co-residency. Nor did the applicant submit medical documents, insurance documents, utility bills or general correspondence addressed to her at the subject apartment as proof of the required co-residency.” While Amoah’s 2018 W-2 contains the Subject Premises as her residence, her 2018 certified tax return shows a Boynton Avenue address.

While Amoah provided an income recertification for the year 2020, not signed until September 9, 2020, she failed to provide income recertifications for the apartment for the years 2018 and 2019. Additionally, the 2020 income recertification is inconsistent as it lists both Amoah and Mingle as residents despite the claim that Mingle vacated in February of 2020.

Because Amoah failed to prove the required co-residency and failed to provide income recertifications for 2018 and 2019, HPD was rational in determining that Amoah was not entitled to succession rights. 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.

9/2/2025  
DATE

  
LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: