

Smith v New York City Dept. of Hous. Preserv. & Dev.
2025 NY Slip Op 33871(U)
October 9, 2025
Supreme Court, New York County
Docket Number: Index No. 452189/2024
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

TARON SMITH, Petitioner, INDEX NO. 452189/2024, MOTION DATE 08/18/2024, MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, ADOLFO CARRION, FRANCES LIPPA

DECISION + ORDER ON MOTION

Respondent.

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

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 TARON SMITH ("Smith") seeks to challenge a determination dated April 15, 2024 by defendant New York City Department of Housing Preservation and Development ("HPD") which denied him succession rights to 141 Beach 56th Place, Apt 213, Arverne, NY 11692 (the "Subject Apartment"). Smith seeks an order annulling and vacating the determination. HPD opposes the application. For the reasons that follow, the petition is denied.

Background

Jeserica Preme ("Preme") was the tenant of record at the Subject Apartment. Smith was Preme's partner and alleges that he has lived at the Subject Apartment with Preme since 2011 and the two had three children together. Preme submitted an Intent to Surrender Possession of the Subject Apartment. Smith alleges that Preme vacated the Subject Apartment on August 2,

2021 and that two of the children continued to live with him in the Subject Apartment after the vacatur of Preme.

Smith applied for succession rights. In a letter dated September 22, 2022, an attorney acting on behalf of the management company, Arverne Preservation LLC, denied Smith's application. On January 11, 2024, Smith, via counsel, appealed the decision to HPD.

In a letter dated February 15, 2024, HPD Hearing Officer Lippa ("H.O. Lippa") requested (1) proof of the date Preme vacated the apartment, (2) income affidavits for 2020 and 2021, (3) proof of residency of the children during the tenancy and continuing to the present, and (4) proof that Preme and Smith were family members who "shared financial and emotional commitment and interdependence."

Two months later, on April 15, 2024, H.O. Lippa issued a determination denying Smith's appeal because he failed to provide the proof requested in the February 15, 2024 letter. The determination found that Smith did not prove the following: that the Subject Apartment was Preme's primary residence at the time she signed the surrender form or that Preme vacated the Subject Apartment on August 2, 2021, the co-residency requirements even applying the August 2, 2021 date, insufficient proof that he was disabled according to the HPD rules, insufficient proof of his co-residency between August 2, 2020, and August 2, 2021, and that his children resided in the apartment prior to Preme's surrender of it.

The instant petition was filed on August 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, unless the individual is a senior citizen or disabled in which case they must prove co-residency for a period of at least one year. The applicant must also prove that they are a member of the tenant’s family and that they appeared on income documentation, such as income affidavits or recertifications, during the relevant period (see 28 RCNY § 3-02 (p) (3); see also *Matter of Mantilla v New York City Dept. of Hous. Preserv. & Dev.*, 230 AD3d 1006, 1006 [1st Dept 2024]).

As a procedural matter, Smith has presented the Court with additional evidence that was not originally included in his appeal to HPD to prove the date of Preme’s vacatur and his disability status. However, “the court may not consider arguments or evidence not contained in the administrative record” (*Matter of Rizzo v New York State Div. of Hous. & Community*

Renewal, 16 AD3d 72, 75 [1st Dept 2005], *affd* 6 NY3d 104 [2005]). Therefore, only the evidence that accompanied the appeal to HPD will be considered.

Smith argues that the HDP determination was without a rational basis and contradicted by the evidence. The court disagrees with petitioner. Based on the evidence submitted, H.O. Lippa was rational in her determination that Smith failed to prove the date Preme permanently vacated the Subject Apartment. Moreover, Smith did not provide credible evidence of the date that Preme moved into a new residence, such as a new lease, and the Intent to Surrender Possession of the Subject Apartment document is insufficient to establish the vacatur date.

Assuming, *arguendo*, that Smith submitted credible evidence to establish August 2, 2021 as the date Preme vacated the apartment and that he qualified as disabled, petitioner still fails to establish by the credible evidence that he resided there during the required co-residency period, for a period of at least one year. The only documents Smith submitted as proof of his residency between August 2, 2020 and August 2, 2021 were an E-Z pass statement dated May 5, 2021, and a letter dated July 1, 2020 regarding his status on a waiting list for alternative housing. The determination states the following:

The applicant did not submit any other documents reflecting the subject apartment as his address during the applicable co-residency period, including but not limited to, Department of Motor Vehicle documents, car insurance documents, New York State tax returns, employment documentation, voter registration, medical or medical insurance documents and credit cards or bank statements.

Furthermore, petitioner failed to submit any evidence of residency for his two minor children, such as school records and also failed to produce income documentation for either 2019 or 2020 as required by 28 RCNY § 3-02 (p) (3). While the failure to include income affidavits is not fatal, it must be overcome by “evidence of primary residence during the operative period is so overwhelming that the absence of an income affidavit may be overlooked”, which was not the

case here. (*Matter of Rodriguez v Torres-Springer*, 180 AD3d 470, 471 [1st Dept 2020], quoting *Matter of Borekas v New York City Dept. of Hous. Preserv. & Dev.*, 151 AD3d 539, 540 [1st Dept 2017] *lv denied* 29 NY3d 1106 [2017]).

Smith argues that his “extreme disabilities and variety of health issues make it very difficult for him, both cognitively and physically, to perform everyday tasks which includes retrieving documents from 4 years ago from various sources.” While the Court is sympathetic to Smith’s health issues, his limitations do not relieve him of his obligation to meet the requirements of 28 RCNY § 3-02 (p) (3), and he was given ample time to do so.

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.

10/09/2025

DATE

LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE