

**701 Elton Residence LLC v New York City Dept. of
Hous. Preserv. & Dev.**

2026 NY Slip Op 30479(U)

February 9, 2026

Supreme Court, New York County

Docket Number: Index No. 153085/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

701 ELTON RESIDENCE LLC

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION & DEVELOPMENT,

Respondent.

-----X

INDEX NO. 153085/2025

MOTION DATE 03/07/2025

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, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Petitioner seeks an order compelling respondent to complete review of its application, alternatively to deem its prior determination final and waiving any bases not articulated in the decision, reversing the determination or in the alternative leave to conduct limited discovery. Respondent answers and opposes the petition. For the reasons set forth below, the petition is denied.

Background

Petitioner originally commenced this proceeding to compel respondent to issue a final determination on its application for tax benefits pursuant to Section 421-a (16) of the New York Real Property Tax Law. While the proceeding was pending, respondent issued a decision wherein it denied petitioner’s application on the grounds that “project criteria conclusively precludes the granting of any tax benefits under the 421-a Program”. See NYSCEF Doc. 15. Respondent’s letter also provided that it did not reach “any conclusions concerning any of the

other criteria that might also make the project ineligible for these tax benefits.” *Id.* Further, the letter provided that it was respondent’s final determination.

Petitioner then filed an amended petition seeking the relief specified above.

Standard of Review

Article 78 review is permitted, where it is alleged a determination was made “in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion....” NY *CPLR* §7803(3).

“Arbitrary” for the purpose of the statute is interpreted as “when it is without sound basis in reason and is taken without regard to the facts.” *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.” *Id.* If the court reviewing the determination finds that “[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed.” *American Telephone & Telegraph v State Tax Comm’n* 61 NY2d 393, 400 [1984].

It is well established that the court should not disturb an administrative body’s determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass’n, Inc. v. Glasser*, 30 NY2d 269 [1972]; *Presidents’ Council of Trade Waste Assns. v New York*, 159 AD2d 428, 430 [1st Dept 1990].

Discussion

Petitioner contends that the determination is “ambiguous as to its finality” because it contends respondent did not complete the review of its application. Further, petitioner contends that the determination must be vacated because it is arbitrary and capricious as it is inconsistent with its prior precedent and based on a misinterpretation of Section 421-a (16) of the New York Real Property Tax Law.

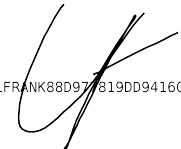
Respondent avers that its prior decisions on other matters are irrelevant to the determination in this case and that its interpretation of the statute in question is entitled to deference.

Preliminarily, the Court rejects petitioner’s characterization of respondent’s determination being an incomplete review of its application. A plain reading of the determination unequivocally establishes that the determination is final and advises that the only review available is through an Article 78 petition. The contention that because respondent did not reach other criteria in the application renders the decision something other than binding is not persuasive. Petitioner seeks to have this Court mandate respondent to issue a determination on other aspects of the application while already determining, based on one criterion, that the applicant is ineligible. The Court declines to impose such a mandate that is neither supported by the statute nor supported by any relevant case law.

As to the respondent’s determination, petitioner has not established that in this specific matter the determination was arbitrary and capricious. The Court agrees the respondent’s determinations in other matters are not relevant nor has a record been fully developed to establish the same exact factual scenarios exist in the other matters where petitioner contends the determinations have been favorable to the applicant. The Court does not deem respondent’s

interpretation of the statute to be irrational and the determination provides reasonable basis to deny the application. Accordingly, it is hereby

ADJUDGED that the petition is denied.

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LYLE E. FRANK, J.S.C.

2/9/2026
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" 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