

Levytsky v New York City Dept. of Hous. Preserv. & Dev.
2026 NY Slip Op 32116(U)
April 30, 2026
Supreme Court, New York County
Docket Number: Index No. 160024/2025
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS **PART** **07**

Justice

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IULIA LEVYTSKY,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT and LUNA PARK
HOUSING CORP.,

Respondents.

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INDEX NO. 160024/2025

02/05/2026,
02/05/2026,
02/05/2026

MOTION DATE 02/05/2026

MOTION SEQ. NO. 001 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 44, 47, 48, 49, 50, 51

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 45, 52, 53, 56

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 46, 54, 55

were read on this motion for DISMISSAL.

Steven W. Smollens, Esq., New York, NY, for petitioner.

New York City Law Department, New York, NY (Amanda C. Ikard of counsel), for respondent
New York City Department of Housing Preservation and Development.

Gallet Dreyer & Berkey, LLP, New York, NY (Michelle P. Quinn of counsel), for respondent
Luna Park Housing Corp.

Gerald Lebovits, J.:

Petitioner, Iulia Levytsky, moves for (1) judgment in this CPLR article 78—declaratory judgment hybrid proceeding/action setting aside the New York City Department of Housing Preservation and Development’s (HPD) April 8, 2025, determination resulting in the issuance of a certificate of eviction from her apartment in respondent Luna Park Housing Corp.’s building. HPD and Luna Park separately move to dismiss this proceeding/action.

Luna Park is a Mitchell-Lama cooperative housing development located in Brooklyn. (NYSCEF No. 1 at ¶ 8.) Mitchell-Lama housing developments are organized as “limited-profit housing companies” designed to expand access to affordable housing for lower and middle-class

residents. (NYSCEF No. 42 at 6.) In exchange for low-interest mortgages and tax exemptions, these properties agree to regulation with respect to permissible profits, rent, and tenant-selection processes. (*Id.*) HPD supervises Mitchell-Lama housing developments in New York City and promulgates rules and regulations. (*See id.* at 6-7.)

Pursuant to this mandate, HPD regulates how individuals may obtain a Mitchell-Lama apartment. An individual can do so in two ways: (1) an individual can get selected off a waiting list, or (2) an individual can obtain succession rights to an apartment from a family member. (NYSCEF No. 42 at 7-9, 10-11.) There is no other way for an individual to obtain a Mitchell-Lama apartment; an individual may not occupy a Mitchell Lama apartment without an HPD-approved lease. (*See* 28 RCNY 3-02 [n] [i].)

Petitioner has occupied Apartment 17J at Luna Park since at least April 2017. (*See* NYSCEF No. 1 ¶ 31.) Petitioner was connected with a woman named “Slava,” who showed her apartments at Luna Park in late 2016 and early 2017. (NYSCEF No. 24 at ¶ 192.) Petitioner then paid \$100,000 to Slava in four cash installments and began occupying the apartment. (*See id.* NYSCEF No. 29 at 66.)

On July 16, 2019, the Department of Investigation (“DOI”) sent a letter to HPD about an investigation into illegal purchases at Luna Park, suggesting that petitioner had obtained her apartment illegally. (*See id.* at ¶ 179.) The DOI investigation included an application allegedly submitted by petitioner in 2018 seeking to become the successor tenant of the apartment. (*See id.* at ¶ 194.) The application stated that petitioner was seeking succession rights from the prior tenant of record, Angela Plikh. (*See id.* at ¶ 195.) The application included a letter from the officer manager of Luna Park, a stock subscription agreement between Plikh and petitioner, a letter allegedly from Plikh transferring rights to the apartment, altered birth certificates for petitioner and Plikh, an altered marriage certificate between petitioner and her husband, and other documents allegedly demonstrating petitioner’s cohabitation with Plikh in 2016 and 2017. (*See id.*)

Luna Park commenced an administrative proceeding seeking a certificate of eviction on August 26, 2019. Administrative hearings were held by HPD between 2020 and 2024.¹ Hon. Frances Lippa, a designated HPD Hearing Officer (HO), presided. (*See id.* at ¶¶ 186-187.) Petitioner moved to dismiss the proceeding on the basis of HPD’s alleged bias; HO Lippa denied the motion. (*See id.* at ¶ 188.)

Luna Park testified about the DOI investigation that led to the referral to HPD. (*See id.* at ¶¶ 190-93.) Luna Park also produced the succession-rights application that petitioner allegedly submitted. (*See id.* at ¶¶ 194-195.) DOI reached the conclusion in its investigation that petitioner “and Angela Plikh are not related,” despite what the materials in the succession-rights application suggested. (*See id.* at ¶ 196.)

¹ Respondent alleges that the lapse in time between hearings was due to the COVID-19 pandemic. (NYSCEF No. 24 at ¶ 183.)

Petitioner testified at two hearings in response. (*See id.* at ¶ 198.) She testified that she was not involved in the forgery or fraudulent creation of the succession application. (*See id.* at ¶ 199.) She also admitted that she was not related to Angela Plikh, did not begin living in the apartment until 2017, and had not seen many of the documents contained in her succession application. (*See id.* at ¶¶ 200-02.) She stated that she was assured that “[e]verything is going through management” and “lawyers are keeping [it under] control” when she asked about the propriety of her paying for her apartment in cash. (*Id.* at ¶ 205.)

On April 8, 2025, HO Lippa granted Luna Park’s petition to issue a certificate of eviction against petitioner. (*See* NYSCEF No. 37.) HO Lippa found that petitioner and Plikh are not related and never lived together in the apartment. (*See id.* at 4.) HO Lippa further found that the succession documents were fraudulently altered to create the appearance that petitioner and Plikh were family members who co-resided in the apartment. (*See id.* at 8.) Accordingly, the hearing officer found that petitioner could not have lawfully obtained her apartment through succession. (*See id.* at 9.) The hearing officer thus issued a certificate of eviction against petitioner. (*See id.*)

Courts review administrative agency determinations under CPLR Article 78. (CPLR 7803.) On review, the court must “ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious.” (*Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 652 [2013]; CPLR 7803 [3].) In conducting this review, the court considers only the grounds invoked by the agency. (*Matter of Rizzo v New York State Div. of Hous. & Community Renewal*, 6 NY3d 104, 110 [2005].)

An individual may obtain a Mitchell-Lama apartment in New York City in two ways: (1) by being selected off a waitlist, or (2) by obtaining succession rights to an apartment from a relative. (*See* 28 RCNY 3-02 [h], [p]; *Matter of Rowan v New York City Dep’t of Hous. Pres. and Dev’p*, 2011 Slip Op 51005 [U], *1 [Sup Ct, NY County 2011] [describing the two ways to obtain a Mitchell-Lama apartment].) Petitioner did not contend that she was selected off a waiting list. (*See* NYSCEF No. 37 at 5-6 [describing petitioner’s testimony about how she obtained her apartment].) Furthermore, the hearing officer concluded that petitioner did not validly obtain her apartment by succession. (*See id.* at 9.)

HO Lippa’s conclusion is based on a review the alleged succession application as well as petitioner’s own testimony. The HO reviewed the documents submitted as part of petitioner’s alleged succession application and found that many of the documents submitted were altered by individuals fraudulently selling apartments at Luna Park. Petitioner did not dispute this. (NYSCEF No. 37 at 8.) Petitioner also admitted that she was not related to Plikh and never lived with her in the apartment. (*Id.* at 4.) These findings were sufficient for the hearing officer to conclude that petitioner did not obtain the apartment by succession. (*See* 28 RCNY 3-02 [p].)

Accordingly, petitioner did not obtain her apartment by either of the permissible methods for doing so. The HO’s decision to issue a certificate of eviction based on a determination that petitioner did not validly obtain her apartment has a rational basis in fact and law and cannot be set aside. (*See Matter of Murphy*, 21 NY3d at 652.)

Petitioner argues that HPD's knowledge of the DOI investigation into petitioner rendered it impermissibly biased. (NYSCEF No. 1 at ¶¶ 123-25.) Petitioner is entitled to a fair adjudication, but a "mere allegation of bias will not suffice" to set aside an administrative proceeding absent a factual demonstration of such bias. (*Matter of Warner v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 197 [1981].) At most, petitioner claims that HPD was under pressure from the DOI, Kings County District Attorney, and others to respond to misconduct at Luna Park. (*See id.* at ¶ 135.) But petitioner does not demonstrate how this impacted her HPD proceeding. (*See Glatzer v Bear, Stearns & Co., Inc.*, 95AD3d 707, 707 [1st Dept 2012] [noting that the "mere appearance of impropriety" is not sufficient to mandate recusal].)

Petitioner's allegations of bias additionally ring hollow, given that petitioner does not contest the central factual finding of the HPD proceeding, namely that she is not related to the previous occupant of her apartment and thus could not have obtained it by succession. (NYSCEF No. 37 at 7.) Accordingly, petitioner's argument that her HPD proceeding was impermissibly tainted by bias lacks merit.

Petitioner further argues that her tenancy exists independently of a succession application and that her payment of rent and fees gives her an occupancy right to the apartment. (*See* NYSCEF No. 1 at ¶¶ 73, 86-87.) As discussed above, however, the only two ways an individual can obtain a Mitchell-Lama apartment are via a waiting list or by succession. (*See* 28 RCNY 3-02 [h], [p]; *Matter of Rowan*, 2011 Slip Op 51005[U] at *1.) Furthermore, petitioner's argument that payment of rent and fees establishes an enforceable landlord-tenant relationship in a Mitchell-Lama apartment is contradicted by New York City's regulations. (*See* 28 RCNY 3-18 [h] ["The acceptance of rent/carrying charges from or on behalf of an illegal occupant shall not be deemed to create any right of tenancy. . . ."].)

Petitioner also seeks a declaratory judgment (1) extinguishing the certificate of eviction, (2) declaring petitioner the rightful tenant of the apartment, and (3) declaring that petitioner may continue her tenancy. (NYSCEF No. 1 at ¶ 3.) Because petitioner seeks by declaratory judgment substantially the same relief that she seeks through her article 78 proceeding, her motion for a declaratory judgment is similarly denied.

Accordingly, it is

ORDERED that the article 78-declaratory judgment hybrid petition is denied and the proceeding is dismissed, with costs and disbursements as taxed by the Clerk upon the filing of an appropriate bill of costs; and it is further

ORDERED that Luna Park and HPD serve a copy of this order with notice of its entry on petitioner; and on the office of the County Clerk (using the NYSCEF document type “Notice to the County Clerk - CPLR § 8019 (c)”), which shall enter judgment accordingly.

4/30/2026

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

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DENIED

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SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:


HON. GERALD LEBOVITZ
J.S.C.