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| <b>Hughes v New York City Loft Bd.</b>   |
| 2022 NY Slip Op 33592(U)   |
| October 18, 2022   |
| Supreme Court, New York County   |
| Docket Number: Index No. 153516/2022   |
| Judge: Laurence L. Love  |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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| <p><b>PRESENT:</b> <u>HON. LAURENCE L. LOVE</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>FRANK HUGHES,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>NEW YORK CITY LOFT BOARD, DASA REALTY CORP.</p> <p align="center">Defendant.</p> <p>-----X</p> | <p><b>PART</b> <span style="float: right;"><b>63M</b></span></p> <p><b>INDEX NO.</b> <u>153516/2022</u></p> <p><b>MOTION DATE</b> <u>08/22/2022,</u><br/><u>08/22/2022</u></p> <p><b>MOTION SEQ. NO.</b> <u>001 002</u></p> <p align="center"><b>DECISION + ORDER ON<br/>MOTION</b></p> |
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 40, 41  
 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42  
 were read on this motion to/for STAY.

Upon the foregoing documents, it is

The following reads on the Petition of the tenant at 401 Wythe Avenue, Ground Floor, Brooklyn, NY, to “challeng[e], and ask[] the Court to correct, the Loft Board’s determination in Loft Board Order No. 5112, issued on March 17, 2022. Loft Board Order No. 5112 denied Mr. Hughes a finding of protected occupancy under MDL Section 281(6) because his unit is a covered Loft Law unit under MDL Section 281(5).;” and on an Order to Show Cause to grant a stay of the Housing Court proceeding *Dasa Realty Corp. v. Hughes*, Index No. 77832/2018.

A Virtual Microsoft Teams Appearance was held on August 22, 2022.

Respondent – New York City Loft Board is a City Agency created by MDL Article 7 – C (“the Loft Law”) in 1982 which has the responsibility for administering the provisions of the Loft Law. Respondent – Dasa Realty Corp. is Petitioner – Frank Hughes’ landlord and owner of the building.

Petitioner – Frank Hughes challenges the Loft Board’s decision that “Mr. Hughes is not a protected occupant” under Article 7803(3), “whether a determination was ... arbitrary and capricious.”

Respondent – New York City Loft Board submits a verified answer (see NYSCEF Doc. No. 11):

“In Loft Board Order No. 4714, dated November 30, 2017 ... the Loft Board granted coverage to the subject building and found that petitioner was not a protected occupant. The basis for the finding that petitioner was not entitled to protected occupancy status is that he did not qualify pursuant to 29 RCNY § 2-09(b)(1) – not only was he not using the subject apartment as his primary residence, but for much of the relevant time, he did not reside in that apartment at all as he had moved in with his girlfriend and rented out his bedroom in the subject apartment. Petitioner filed a second application with the Loft Board seeking protected occupancy status on July 29, 2019. OATH ALJ ... issued a Report and Recommendation on January 29, 2021, recommending denial of petitioner’s second application. On June 23, 2021, and March 3, 2022, respectively, the Supreme Court and the Appellate Division affirmed the initial November 2017 denial of petitioner’s first application of protected occupancy status. On March 17, 2022, the Loft Board issued Loft Board Order No. 5112, denying petitioner’s second application for protected occupancy status. This Article 78 petition followed.” (see NYSCEF Doc. No. 11 Par. 34, 36 – 40).

Respondent – New York City Loft Board raises a procedural issue that, “a substantial evidence issued as specified in question four of Section 7803 of the CPLR is raised, if it cannot dispose of the case by deciding the legal issues, the Court shall make an order directing that petitioner’s claim for Article 78 relief be transferred for disposition to a term of the Appellate Division ... the First Department” (see NYSCEF Doc. No. 11 par. 49).

Respondent – New York City Loft Board submits the seven (7) page November 30, 2017 Decision along with Reconsideration. The Loft Board reviewed the facts and applied them to the relevant loft law and made a decision that was rationally based on the circumstances (see

NYSCEF Doc. No. 13). A Decision by the Appellate Division, First Department “den[ied] the petition to annul the determination of respondent New York City Loft Board” (see NYSCEF Doc. No. 12).

Transcripts form the second application to the Loft Board have been submitted (see NYSCEF Doc. Nos. 14 – 16). The denial of petitioner’s second application has also been submitted (see NYSCEF Doc. No. 17), along with an OATH Denial of Petitioner’s application for a “protected occupancy” (see NYSCEF Doc. No. 19).

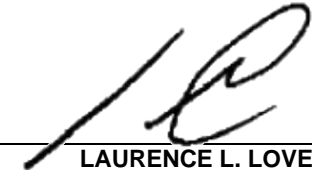
Respondent – Dasa Realty Corp. submits an affirmation in opposition to New York City Loft Board’s request to transfer to the Appellate Division.

Administrative agencies enjoy broad discretionary authority when making determinations on matters which they are empowered to decide. “Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard” (see *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 [1974]). The agency is “entitled to a high degree of judicial deference, especially when acting in the area of its particular expertise” (see *Matter of Nazareth Home of the Franciscan Sisters v. Novello*, 7 N.Y.3d 538 [2006]).

After a review of the voluminous submissions, records, and court proceedings, this Court finds that the administrative process has a rational basis for the facts to the relevant law. Petitioner has brought many issues multiple times to multiple agencies and multiple courts, and this Court finds that the Petition does not have merit and the New York City Loft Board performed their duties much above the rational standard needed here.

ADJUDGED that the application is DENIED, and the petition is dismissed, with costs and disbursements to respondent; and it is further

ORDERED that the Order to Show Cause to grant a stay of the Housing Court proceeding *Dasa Realty Corp. v. Hughes*, Index No. 77832/2018 is DENIED in its entirety.

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| <u>10/18/2022</u><br>DATE | <br>LAURENCE L. LOVE, J.S.C. |  |
| CHECK ONE:                | <input checked="" type="checkbox"/> CASE DISPOSED  | <input type="checkbox"/> NON-FINAL DISPOSITION |
| APPLICATION:              | <input type="checkbox"/> GRANTED   | <input type="checkbox"/> GRANTED IN PART       |
| CHECK IF APPROPRIATE:     | <input checked="" type="checkbox"/> DENIED   | <input type="checkbox"/> OTHER                 |
|                           | <input type="checkbox"/> SETTLE ORDER  | <input type="checkbox"/> SUBMIT ORDER          |
|                           | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN  | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
|                           |  | <input type="checkbox"/> REFERENCE             |