

Walker v New York City Dept. of Hous. Preserv. & Dev.

2023 NY Slip Op 30022(U)

January 4, 2023

Supreme Court, Kings County

Docket Number: Index No. 512253/2022

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 20 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 4th day of January 2023.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY
OF KINGS

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KEVIN WALKER,

Petitioner,

DECISION and ORDER

Index No. 512253/2022

Mo. Seq. 001

-against-
NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT et. al.,

Respondents.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR §2219 [a], of the papers considered in the review NYSCEF #s: 1-26.

Petitioner filed an Order to Show Cause requesting that the Department of Housing Preservation and Development of the City of New York’s (hereinafter “HPD”) administrative decision dismissing Petitioner’s appeal for succession rights be annulled and reversed pursuant to Article 78 of the Civil Practice Law and Rules. Among other arguments, Petitioner claims that said decision effected two (2) due process violations. First, Petitioner claims that HPD certified a notice of eviction based on its decision without giving Petitioner a hearing. Second, he argues that the decision expressly stated that the only review available is by way of an Article 78 proceeding but because this was the first decision regarding Petitioner’s succession application, Petitioner is entitled to an internal appeal first.

On or about January 2, 2020, Respondent St. James Towers, Inc. commenced a lease termination proceeding at HPD. Respondent St. James Towers, Inc. submitted a Notice of Application for a Certificate of Eviction. At that time Petitioner had not submitted an application for succession rights of the subject apartment. Petitioner’s attorney subsequently sent correspondence to Administrative Hearing Officer Lippa (hereinafter “AHO Lippa”) acknowledging the Notice and officially requesting succession rights on behalf of Petitioner. In a letter, dated January 23, 2020, HPD informed petitioner that it would consider his succession rights claim and also informed petitioner of his burden in proving succession, and identified the types of documents that would help him prove his case. On February 28, 2020, Petitioner submitted

paperwork to support his succession claim. On or about April 2020 Respondent St. James Towers, Inc., submitted a response to Petitioner's application, arguing why Petitioner was not entitled to succession rights. In a decision dated December 27, 2021, HPD denied petitioner's application for succession rights.

Petitioner argues that HPD's decision to deny Mr. Walker's succession rights claim was arbitrary and capricious because the decision was neither based in sound reason nor made with adequate regard to the facts presented. The court rejects this argument based on HPD's thorough inspection of Petitioner's application and all the supporting documents as well as the diligent application of HPD's rules as set forth below.

Department of Housing Preservation and Development of the City of New York is the supervising agency for the Mitchell-Lama development in this case (see New York City Charter, Chapter 61 § 1802(6)(d)). The rules implemented by HPD for performing its duties and obligations in this regard are delineated in Title 28, Chapter 3 of the Rules of the City of New York ("RCNY"). Title 28 RCNY § 3-02 (p)(8)(ii) authorizes the Commissioner of HPD or her designee, here AHO Lippa, to review the housing company's determination denying an application for succession rights and issue a final decision regarding an applicant's appeal.

"An agency's interpretation of its own regulations 'is entitled to deference if that interpretation is not irrational or unreasonable'" *Matter of Jourdain v. New York State Div. of Hous. and Community Renewal et. al.*, 159 A.D.3d 41, 47 [2d Dept 2018] citing *Matter of IG Second Generation Partners L.P. v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 10 NY3d 474, 481 [2008], quoting *Matter of Gaines v New York State Div. of Hous. & Community Renewal*, 90 NY2d 545, 549 [1997]).

In determining whether the relief Petitioner seeks is appropriate the Court reviews "whether 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 power." See CPLR § 7803(3). It is not the function of the court to reach its own determination based on the documents submitted with Petitioner's application; only to determine whether there was a rational basis for AHO Lippa to find that Petitioner failed to prove his entitlement to succession rights. See 28 RCNY 3-02 [p] [2] [ii]; see also *Morton v. New York City Dept. of Hous. Preserv. & Dev.*, 93 A.D.3d 727, 727-8 [2nd Dept.2012] citing *Matter of Alfred v Barrios-Paoli*, 251 AD2d 659, 660 [1998]; *Matter of Williams v New York City Dept. of Hous. Preserv. & Dev.*, 17 Misc 3d 1129[A], [2007]; cf. *RHM Estates v*

Hampshire, 18 AD3d 326 [2005]; *Wiener Mgt. Co. v Trockel*, 192 Misc 2d 696 [2002]. Specifically, in this matter the court will review HPD's determination that Petitioner failed to establish an emotional and financial commitment and interdependence between himself and the tenant/cooperator in accordance with 28 RCNY § 3-02(p)(2)(ii)(B) and that he resided in the subject apartment as his primary residence, with the tenant, for at least two years prior to the date she permanently vacated the apartment.

Pursuant to 28 RCNY § 3-02(o)(3)(i), if the tenancy of the tenant/cooperator of record terminates, no occupant of the apartment shall have any rights under the lease or occupancy agreement, or succession rights, except as set forth in 28 RCNY § 3-02(p). In order to prove his entitlement to succession rights, Petitioner must prove (1) he is a family member of the tenant according to HPD definitions, (2) that he resided with the tenant in the subject apartment for at least two years immediately preceding the date the tenant vacated the apartment, and (3) that he was included as an occupant of the subject apartment on the relevant income affidavits. See Title 28 RCNY § 3-02(p).

All parties agree that Petitioner is not an enumerated "family member" as defined in Title 28 RCNY § 3-02(p)(2)(ii)(A). However, Title 28 RCNY § 3-02(p)(2)(ii)(B) provides that those who do not fit as an enumerated "family member" may still qualify for succession rights, as non-enumerated family member, if they can "prove an emotional and financial commitment and interdependence between such person and the tenant cooperator." Further providing that, "[a]lthough no single factor shall be determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed shall be the income affidavit filed by the tenant/cooperator for the apartment and other evidence which may include, without limitation," See Title 28 RCNY § 3-02(p)(2)(ii)(B). Title 28 RCNY § 3-02(p)(3) further clarifies that the "family member" per HPD definitions, evidently either enumerated by the RCNY or non-enumerated, must be listed on "any income documentation submitted by such tenant/cooperator to the Department or to any other governmental agencies (for example: income affidavits, recertification of Section 8 forms)"

Pursuant to 28 RCNY § 3-02(m)(1)(vi), the tenant/cooperator named on the lease "must actually occupy the apartment as his or her primary residence." Furthermore, according to 28 RCNY § 3-02(o)(3)(iii), both the tenant/cooperator and any occupant of the apartment in a Mitchell-Lama development shall "occupy the apartment as their primary residence, and the

occupant shall represent his or her intention to do so prior to commencing occupancy.” Factors that can be used to determine primary residence include whether an “address other than such dwelling unit [is specified] as his or her place of residence or domicile in any tax return, motor vehicle registration, driver’s license or other document filed with a public agency....” See 28 RCNY § 3-02(n)(4).

The tenant of record, Lillian Walker, was admitted to a facility on March 24, 2015. The Petitioner claims that she returned and resided in the subject apartment and was readmitted to the facility a few years later. The initial report signed by Ms. Walker’s court appointed Guardian on December 15, 2017, and filed with the Kings County Supreme Court on January 2, 2018, and referenced in AHO Lippa’s findings, shows that Ms. Walker resided in the facility in 2017. The report notes that the Guardian visited Ms. Walker in the facility on August 28, 2017, September 25, 2017, October 28, 2017, November 15, 2017, and November 25, 2017. In said report the Guardian wrote that the tenant would continue to reside at the facility and the subject apartment would be sold. According to the annual report signed by the Guardian on January 28, 2019, the Guardian continued to visit the tenant in the facility throughout 2018 and Ms. Walker received treatment at the facility into 2019. Accordingly, the latest date that can be used as the date the tenant permanently vacated the apartment is August 28, 2017, because it is not possible for the Petitioner to have resided with Ms. Walker while she resided at the facility. Therefore, Petitioner has the burden to prove that he resided in the subject apartment as his primary residence, with the tenant of record, from at least August 28, 2015, to August 28, 2017.

As part of his application, Petitioner submitted a driver’s license bearing the address of the subject apartment which was issued on March 30, 2016. As Respondent St. James Towers, Inc., asserts, this does not establish that Petitioner resided in this apartment from August 28, 2015 to March 30, 2016. Further, Petitioner did not provide any income affidavits, or income documentation covering the requisite time period. The financial documents Petitioner provided were either dated after the requisite time period or were not dated at all.

After reviewing the documents provided by Petitioner in his application, AHO Lippa found that (1) Petitioner failed to prove that he is a family member of the tenant of record as prescribed by 28 RCNY § 3-02(p)(2)(ii)(A); (2) he failed to demonstrate, through sufficient, credible and reliable proof, that the subject apartment was his primary residency for at least the two years

immediately prior to the date that the tenant of record vacated the subject apartment; and (3) he was not included as an occupant of the subject apartment on the relevant income affidavits.

Petitioner cites Court of Appeals case *Matter of Murphy*, to indicate that it is not an absolute requirement for Petitioner to be named on the income affidavits. However, the petitioner in *Murphy* had moved into the subject apartment with his parents, the tenants of record, when he was approximately 2 months old and had lived there, with his parents, his entire life. See *Matter of Murphy*, 21 N.Y.3d 649, 652 (2013). The court in *Murphy* stated that the purpose of the requirement that the income affidavits include the successor's name is to prove that the applicant had resided in the apartment for the requisite period of time prior to the tenant of record's departure. *Id.* at 654. In *Murphy*, evidence that the applicant for succession rights had lived there for his entire life, including the two years prior to his parents' departure, was "overwhelming" and therefore court found that the agency's denial of the petitioner's succession rights because his name was not on the income affidavits was arbitrary and capricious. *Id.* at 655. In contrast, here, there was virtually no proof as to any financial intermingling or information to determine that petitioner resided in the apartment with the tenant of record for the two years prior to her departure. Therefore, the exception described in *Murphy* would not be appropriate in this case and it is not arbitrary and capricious for HPD to require income documentation.

Furthermore, Petitioner did not provide documents to show that there was any financial commitment and interdependence between himself and the tenant of record. Nor did he provide any documentation to prove that he resided in the subject apartment for the two years prior to the date Ms. Walker permanently vacated the apartment. For the foregoing reasons, this court finds that there was a rational basis for AHO Lippa's findings and therefore the application of HPD's rules in this case were not arbitrary and capricious.

In reference to petitioner's due process claims, applicants for succession rights are not entitled to a hearing; succession rights are determined by an application process, including appeals, pursuant to 28 RCNY § 3-02(p)(8). See also *Sanchez v. Comm'r, Dep't of Hous. Pres. and Dev. of City of N.Y.*, 150 A.D.3d 860, 862 (2d Dept. 2017) citing *Matter of Pietropolo v. New York City Dept. of Hous. Preserv. & Dev.*, 39 A.D.3d 406, 407 (1 Dept. 2007); *Matter of Cadman Plaza N. v. New York City Dept. of Hous. Preserv. & Dev.*, 290 A.D.2d 344, 344–345 (1 Dept. 2002). The court further rejects Petitioner's claim that in denying Mr. Walker's claim, HPD arbitrarily enforced its rules and chose to apply its succession rights rules without properly describing the

reasoning. This argument fails because Petitioner was given guidance regarding his burden, details enumerating required paperwork, and assistance regarding how to obtain such documentation.

HPD, in this case, treated the Notice of Application for a Certificate of Eviction as the first denial of succession rights. It is noted that petitioner had not applied for succession rights at that time more than two years after the tenant of record permanently vacated the subject apartment. Along with the Notice, Petitioner was informed of his burden to prove succession, and the types of documents that would help him prove his residency, other factors that would be considered in his application, and was even provided with the forms to obtain documents. After receiving this information Petitioner provided paperwork to support his application for succession rights. As discussed above, the paperwork provided by Petitioner was insufficient to establish his succession rights. Considering these facts, Petitioner was given the guidance that a first denial and explanation of such denial would have provided. The additional application that Petitioner claims was denied him would not have made a difference because at the time he submitted his application, he had already been informed of the type of documents the agency would rely upon for its determination. It is noted that Petitioner does not claim that he can provide income affidavits or any additional income documentation, only that these are not necessary.

In sum, Petitioner had a full and fair opportunity to be heard within the papers submitted with his application after receiving guidance indicating what information was needed and what paperwork would serve as proof of such information. Petitioner failed to establish an emotional and financial commitment and interdependence between himself and the tenant/cooperator in accordance with 28 RCNY § 3-02(p)(2)(ii)(B) and that he resided in the subject apartment as his primary residence, with the tenant of record, for at least the two years prior to the date she permanently vacated the subject apartment as required by HPD rules. AHO Lipka's findings in this case were rational and reasonable and the application of such rules was not arbitrary and capricious. Accordingly, Petitioner's motion is denied.

This constitutes the decision and order of the court.

ENTER:



Hon. Consuelo Mallafre Melendez

J.S.C.