

Case No.: \_\_\_\_\_

---

**In The  
Supreme Court of the United States**

---

GEORGE KRALIK,

*Petitioner,*

v.

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT and  
TRI-FAITH HOUSING COMPANY, INC.,

*Respondents.*

---

*On Petition for a Writ of Certiorari to the  
Court of Appeals of the State of New York*

---

---

**PETITION FOR A WRIT OF CERTIORARI**

---

YORAM SILAGY

*Counsel of Record*

DARRYL M. VERNON

VERNON & GINSBURG, LLP

261 Madison Avenue, 26<sup>th</sup> Floor

New York, New York 10016

(212) 949-7300

ysilagy@vgllp.com

*Counsel for Petitioner*

---

APPELLATE INNOVATIONS  
(914) 948-2240



Printed on Recycled Paper

21932

## QUESTIONS PRESENTED

1. Should an administrative agency's refusal to act on a tenant's succession application for many years and its failure to give the tenant a hearing on his succession claim be reversed because it violates the tenant's right to a trial or jury trial under this court's ruling in SEC v. Tarkesy, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2023)?
2. Should the courts below have exercised their independent judgment in deciding whether an agency acted within its statutory authority – as this Court required in its ruling in Loper Bright Enterprises v. Raimondo, 144 S.Ct. 224, 219 L. Ed 2d 832 (2024)?

## **PARTIES TO THE PROCEEDING**

Petitioner to this Court is George Kralik. Respondents are New York City Department of Housing, Preservation & Development and Tri-Faith Housing Company, Inc.

## STATEMENT OF RELATED CASES

All proceedings directly related to this case include:

Kralik v N. Y. City Dept. of Hous. Preserv. & Dev.,  
41 NY3d 910 (2024)

Matter of Kralik v. New York City Dept. of Hous.  
Preserv. & Dev., 203 N.Y.S.3d 537  
(App. Div., 1<sup>st</sup> Dept. 2024)

Kralik v. N.Y.C. Dep't of Hous. Pres. & Dev.,  
2022 NY Slip Op 33595(U) (Sup. Ct.)

Tri-Faith Housing Company v. Kralik,  
L&T 308098/22 (Civ Ct NY Co)

## TABLE OF CONTENTS

	<b>Page</b>
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING .....	ii
STATEMENT OF RELATED CASES .....	iii
TABLE OF CONTENTS.....	iv
INDEX TO APPENDICES .....	vi
TABLE OF AUTHORITIES .....	vii
OPINION BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
PRELIMINARY STATEMENT .....	2
STATEMENT OF FACTS .....	3
A. Introduction .....	3
B. Documents Submitted by Mr. Kralik in Support of his Succession Claim .....	5
C. Mr. Kralik’s Multiple Requests for Succession to the Apartment .....	7

D. The Cooperative's Recognition of Mr. Kralik as a Shareholder and their Eventual Approval of his Succession Rights, Subject to HPD Approval.....	10
E. Affidavits Submitted in Support of Mr. Kralik's Succession Claim .....	13
THE PETITION SHOULD BE GRANTED .....	17
CONCLUSION.....	22

**INDEX TO APPENDICES**

Appendix A	
New York State Court of Appeals Decision and Order, dated and entered June 20, 2024 .....	A-1
Appendix B	
Appellate Division First Department's Court's Decision and Order, dated January 11, 2024 .....	B-1
Appendix C	
Supreme Court Of the State of New York Decision and Order, dated October 18, 2022 .....	C-1
Appendix D	
Housing Court of the City of New York, County of New York Decision/Order, dated July 25, 2024.....	D-1

## TABLE OF AUTHORITIES

	<b>Page</b>
 <b><u>Cases:</u></b>	
<u>1234 Pac. Mgmt. v Jefferson,</u> 803 NYS2d 19 (Civ Ct, Kings County 2005).....	21
<u>300 E. 34th St. Co. v Habeeb,</u> 248 AD2d 50 (1st Dept 1997) .....	21
<u>Cox v J.D. Realty Associates,</u> 217 AD2d 179 (1st Dept 1995) .....	21
<u>Loper Bright Enterprises v. Raimondo,</u> 144 S.Ct. 224, 219 L. Ed 2d 832 (2024).....	i, 1, 18
<u>Matter of Cadman Plaza N., Inc. v. N.Y. City</u> <u>Dept. of Hous. Pres. &amp; Dev.,</u> 290 A.D.2d 344, 737 N.Y.S.2d 590 (1st Dept. 2002).....	18
<u>Matter of Memorial Hosp v. Axelrod,</u> 68 N.Y.2d 958, 960, 503 N.E.2d 97 (1986).....	17
<u>Matter of Murphy v. New York State Div. of</u> <u>Hous. &amp; Community Renewal,</u> 21 NY 3d 649, 977 N.Y.S.2d 161 (2013).....	19, 22
<u>Matter of Schorr v. New York City Dept. of</u> <u>Hous. Preserv. &amp; Dev.,</u> 10 N.Y.3d 776, 886 N.E.2d 762 (2008).....	2, 17
<u>Matter of Shankman v. Axelrod,</u> 73 N.Y.2d 203, 538 N.Y.S.783 (1989).....	17



SEC v. Tarkesy.

144 S.Ct. 2117, 219 L.Ed.2d 650 (2023)..... i, 1, 20

**Statutes:**

28 RCNY 3-02 (p)(3).....21

28 RCNY 3-02(p)(8).....18

New York City Charter §1802 (6)(d) .....17

Private Housing Finance Law §2 [15].....17

Title 28 of the Rules of the City of New  
York (RCNY) .....17

## **OPINION BELOW**

The opinion of the New York Court of Appeals is published at 213 N.Y.S.3d 262. The opinion of the Appellate Division of the New York Supreme Court, First Judicial Department is published at 203 N.Y.S.3d 537. The relevant order of the New York Supreme Court is unpublished.

## **JURISDICTION**

The New York State Court of Appeals denied Petitioner's motion for leave to appeal on June 20, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The 7th Amendment to the U.S. Constitution, and the rulings entitled SEC v. Tarkesy, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2023) and Loper Bright Enterprises v. Raimondo, 144 S.Ct. 224, 219 L. Ed 2d 832 (2024).

## PRELIMINARY STATEMENT

In this Petition, Petitioner respectfully submits that certiorari should be granted because the Courts below - in this proceeding involving a son (the Petitioner George Kralik) seeking succession to his mother's Mitchell Lama<sup>1</sup> Cooperative apartment – did not consider that the Cooperative consented to the succession, which then should have been affirmed by the New York City Department of Housing (“HPD”). HPD did nothing, neither affirming nor rejecting the Cooperative approval. HPD violated the Mitchell Lama Laws by failing to affirm or deny the succession application. Three years elapsed with no action taken by HPD, thus forcing Petitioner to retain counsel. HPD's conduct became even worse, as according to the Cooperative's counsel, they then met with the Cooperative's counsel – without Petitioner's knowledge – which somehow resulted in the reversal of the Cooperative's decision to approve the succession application. This unilateral decision was made notwithstanding the fact that Petitioner is a senior citizen who has resided in the apartment for the past 19 years – and for a decade of those years, right after his mother passed away, he promptly and continuously told the Cooperative he was the successor and sent them everything requested. The Cooperative also accepted Mr. Kralik's maintenance the entire time.

---

<sup>1</sup> As noted in the ruling in Matter of Schorr v. New York City Dept. of Hous. Preserv. & Dev., 10 N.Y.3d 776, 886 N.E.2d 762 (2008), the Mitchell-Lama Law (Private Housing Finance Law article II) was enacted in 1955 to offer private housing companies the incentive to develop low- and moderate-income housing.

Moreover, HPD did not give Petitioner the right to a trial regarding his succession claim.

This Court should accept this appeal because the HPD did not act within its statutory authority in the way it handles the tenant's succession application, and did not grant him the right to a trial. The Mitchell-Lama Law is silent as to what should occur if HPD fails to act. We respectfully submit that this Court should address what the remedy should be. The Courts below and HPD did not address this issue in ruling in the case at bar (the Appellate Division did not discuss this issue in its ruling).

## STATEMENT OF FACTS

### A. Introduction

Mr. Kralik, after emigrating from Hungary, grew up in Mitchell-Lama Cooperative Apt. 7G at 1646 First Avenue, New York, NY 10028 (the "Apartment"), living there with his mother Marta Kralik and the rest of their family. Marta Kralik was a tenant of record on the shares and proprietary lease for the Apartment, in a Cooperative governed and organized under the Mitchell-Lama Law. Mr. Kralik is a senior citizen, born in 1945 . He moved out of the Apartment in 1978 and moved back into the Apartment on a full-time basis in May 2005, living there as his primary residence with his mother Marta Kralik. Marta Kralik passed away in February 2009 , and Mr. Kralik has continued to reside in the Apartment as his primary residence since his mother's death.

Immediately after his mother's passing in 2009, Mr. Kralik told the Cooperative of his mother's passing and requested from the Cooperative that he succeed his mother as the shareholder for the Apartment and that he be allowed to continue to reside in the apartment, as was his right under the Mitchell-Lama Succession Laws. Mr. Kralik wrote repeatedly to the Cooperative with this request and submitted extensive documents to the Cooperative proving he had been living in the Apartment since May 2005. For this entire period, from 2005 onward, the Cooperative accepted his maintenance and treated him as the successor shareholder (e.g., writing to him as a shareholder).

In 2017, after excessive delays by the Cooperative (8 years, to be exact), the Cooperative advised, in writing in a 2017 Memorandum whose subject was listed as "Stock Change" [R: 161], that they were sending in his succession application to HPD for HPD's approval. The Cooperative requested a \$50 fee from Mr. Kralik for the issuance of the new shares and lease, which he paid. But the Cooperative never followed up with HPD and never advised Mr. Kralik if HPD gave final approval for succession. The Cooperative's approval of his succession request was further confirmed by their acceptance of maintenance directly from Mr. Kralik from 2005-2022, and a letter they addressed to him as the Tenant of Record of the apartment, when they wrongly accused him of subletting the apartment.

B. Documents Submitted by Mr. Kralik in Support of his Succession Claim

The Cooperative's 2017 approval of Mr. Kralik's succession request was based on the substantial documentation he gave to them when he initially sought succession and countless times thereafter from 2009-2017. These same documents, and more, were again submitted in 2020 and when he once again followed up for succession, after the Cooperative never advised him whether HPD signed off on the initial approval of his succession claim. The documents consisted of the following:

1. Income affidavits for the Apartment for the years of 2006, 2007, and 2008, required to be filed on an annual basis under Mitchell-Lama laws, which list both Mr. Kralik and his mother Marta Kralik as occupants of the apartment [R: 116-120].
2. City and State Tax returns for Mr. Kralik (filed jointly with his wife who resided elsewhere as confirmed by her and Mr. Kralik's affidavits) for the years 2007, 2008, and 2009, listing the Apartment as his address [R: 112-114].
3. Voter registration and voting history for Mr. Kralik showing the Apartment as his address from 1990 through 2019 [R:1101-111] (he never changed the address after he moved out of the Apartment in 1978 because it was not necessary since he only moved two blocks away and continued voting with that

address after moving back into the Apartment in May 2005).

4. Driver's licenses for the apartment issued respectively on March 24, 2004 and March 7, 2012 [R: 115], with the Apartment as his address (as with his voting records, Mr. Kralik never changed the address on his driver's license after moving out of the Apartment in 1978, and continued listing the Apartment address on the license when he moved back into the Apartment in May 2005).
5. Mr. Kralik's Social Security Statement dated January 16, 2008, with the Apartment address [R: 142].
6. Death Certificate for Mr. Kralik's mother Marta Kralik, which lists Mr. Kralik as the informant, with the Apartment address as his residence [R: 144].
7. New York City Department of Finance Certificates of Exemption from the Additional NYC 8% Parking Tax for 2006 and 2008 addressed to Mr. Kralik with the Apartment address [R: 129-130].
8. Mr. Kralik's Application dated June 2, 2008, to the New York City Department of Finance For Renewal of the Manhattan Resident Parking Tax Exemption, with the Apartment address [R: 128].

9. Mr. Kralik's bank statement from March 2008 from Ridgewood Savings Bank with the Apartment address [R: 122].

10. GEICO Car Insurance Statements from 2007, 2008, and 2009 with the apartment address [R: 124-127].

C. Mr. Kralik's Multiple Requests for Succession to the Apartment

Mr. Kralik made multiple requests for succession in writing and verbally from the time his mother died in 2009, covering a span of some eight years, until the Cooperative in 2017 finally advised that they were forwarding their approval of his succession claim to HPD for them to sign off on the Cooperative's granting of the succession rights. During this entire period, the Cooperative accepted maintenance from Mr. Kralik under his name for the Apartment from 2005-2022.<sup>2</sup> The requests from Mr. Kralik for succession rights and/or where he advises the Cooperative that he is living in the Apartment as his primary residence consist of the following letters:

1. Letter dated February 20, 2009 [R: 135] from Mr. Kralik to the Cooperative's managing

---

<sup>2</sup> It is undisputed that the Cooperative accepted maintenance directly from Mr. Kralik for all these years, and therefore only one maintenance check from Mr. Kralik dated March 7, 2008 was submitted to HPD as part of the evidence. All of the checks for every single month for the period of 2005-2022 were submitted in the pending holdover proceeding between the parties, as a ground for dismissal of that proceeding. See Tri-Faith Housing Company v. Kralik, L&T 308098/22 (Civ Ct NY Co) NYSCEF Doc#26.



agent Maxwell-Kates, which he wrote right after his mother's death, where he asked them to certify that his Apartment is his primary residence.

2. Letter dated April 17, 2009 [R: 136] from Mr. Kralik to the Cooperative's managing agent Maxwell-Kates denying an illegal sublet and stating that he lives in the Apartment as his primary residence now and when his mother was alive.
3. Mr. Kralik's reply dated September 19, 2009 to the Cooperative, written in pen on their letter dated August 5, 2009 [R: 138-140]. The Cooperative's August 5, 2009 letter was addressed to the shareholder of the Apartment and constituted a 2006 income audit for the shareholder. Since Mr. Kralik had already advised the Cooperative seven months prior to the letter that his mother had passed away, the letter was clearly addressed to him when referring to the "shareholder". Mr. Kralik responded by submitting his requested 2006 New York City tax return, as well as other documents documenting his primary residence in the Apartment.
4. Mr. Kralik's letter dated April 23, 2012 [R: 141-142] to the Cooperative's managing agent Tudor Realty Services Corp. responding to a 2008 income verification audit, where he reminds them that his

mother is deceased and that he requested succession rights to the Apartment in 2009, and provides with the letter his 2008 New York State and City tax returns, as well as other documents proving his primary residence in the Apartment.

5. Mr. Kralik's letter dated February 27, 2014 [R: 143-148] to the Cooperative's managing agent Tudor Realty Services Corp. that requests succession rights to the apartment and enclosed his New York State and City tax returns for the years 2007-2011.
6. Mr. Kralik's letter dated May 15, 2014 [R: 158] to the Cooperative's managing agent Tudor Realty Services Corp. advising them that as they requested, he is enclosing his 2007 and 2008 New York City and State tax returns, and requesting that he be granted succession right to the apartment and that a stock certificate and occupancy agreement be issued in his name.
7. Mr. Kralik's letter dated October 1, 2014 [R: 159] to the Cooperative's managing agent Tudor Realty Services Corp. where he confirms a conversation that he had with the managing agent in late May 2014, when they advised him that they would be sending him the stock certificate and occupancy agreement under his name for the Apartment within two to four months. The letter further states that since late May

2014, they have been ignoring his phone calls, and once again requests succession rights to the Apartment.

8. Mr. Kralik's reply dated April 8, 2017 [R:157] to the Cooperative's managing agent Tudor Realty Services Corp. Memorandum dated March 10, 2017, which requests proof of residency for his mother Marta Kralik. In Mr. Kralik's reply, he once again advises that his mother passed away in 2009 and asks for succession rights to the apartment.
9. Mr. Kralik's letter dated July 7, 2017 [R: 160] to the Cooperative's managing agent Tudor Realty Services Corp. reiterating that he has been requesting succession rights for the Apartment from them since 2009, and once again asking that the stock and lease be issued in his name, and also attaching documents in support of the claim.

D. The Cooperative's Recognition of Mr. Kralik as a Shareholder and their Eventual Approval of his Succession Rights, Subject to HPD Approval

The Cooperative wrote several letters over the years where they in effect recognized him as the shareholder and proprietary lessee for the Apartment, and then finally approved his succession rights to the apartment in a 2017 Memorandum, subject to HPD's approval.

These letters include the following.

1. Letter dated April 9, 2009 [R: 133] from the managing agent Maxwell-Kates addressed directly to Mr. Kralik which acknowledges him as the unit owner of the Apartment. The letter, which alleges an illegal sublet, states in part:

Please be advised that you are in violation of the occupancy agreement for the building. There are many rules and regulations that **owners** agree to prior to moving into the Coop. Foremost amongst those rules is that the apartment must be the primary residence of the **unit owner**. [Emphasis Added].

2. Memorandum dated July 27, 2017 entitled “Stock Change” (in the “Re” section) [R: 161-163] from Cooperative from the Cooperative’s managing agent Tudor Realty Services Corp.to Mr. Kralik, stating that they are submitting his application for review and approval to HPD, after he had already submitted multiple requests and documentation regarding his succession request. The Memorandum states:

Please complete the enclosed application and return as soon as possible, with a \$50.00 money order payable to Tudor Realty Services. Upon receipt the stock change request will be submitted to HPD for final review and approval.

3. Mr. Kralik submitted the application along with the requested documents and the \$50.00 money order that the managing agent requested for issuance of the new stock and lease. He did not hear back from the Cooperative, as unbeknownst to him at the time, HPD failed to approve or disapprove the Cooperative's decision to grant him succession rights. Therefore, after three years of waiting in vain, he hired an attorney to inquire further. The Cooperative's attorney, in a letter dated August 12, 2020 [R:252-256], advised that their managing agent reviewed Appellant's application with HPD's Housing Supervisor, without the presence of Appellant. The letter states in part:

Cooperator Marta Kralik passed away in February 2009. This letter responds to the Application of George Kralik for Succession dated August 1, 2017, which was reviewed by the Housing Company's managing agent with HPD's Division of Mitchell-Lama Housing Supervision and then referred to our office due to various questions or inconsistencies regarding your residency at 239 East 79th Street, Apt 11N.

[R:252-256].

The Cooperative then inexplicably reversed their position and denied the succession request – a

request they had already approved and forwarded to HPD three years earlier. This led to Appellant's appeal to HPD and his filing of his Article 78 Petition.

E. Affidavits Submitted in Support of Mr. Kralik's Succession Claim

Mr. Kralik submitted multiple affidavits from a neighbor, friends, and even a former employee of the Cooperative, documenting his primary residence and succession rights to the Apartment. These affidavits consist of the following:

1. Jose Sanches [R: 186], the former superintendent and handyman of the Cooperative, stated in his affidavit sworn to on August 5, 2021 that he was employed in the building during the period of 2005-2019 and also lived in the building during this period, and could say with certainty that Mr. Kralik moved into the Apartment in 2005 and lived there since then as his primary residence. This is a key admission by a disinterested party with onsite knowledge of the relevant facts. Mr. Sanches states in his affidavit:

Specifically, from 2005 until 2019 when I retired, I worked in the building and lived in the building in Apartment 11H. I know that George Kralik moved into his mother's apartment at 1646 First Avenue Apartment 7G, New York in 2005. I knew his mother well and I know their apartment well. From 2005 until my

retirement I would see George Kralik on a regular basis, just about daily, and knew that he lived with his mother as his home. I understand the term primary residence, and it is plain to me that 7G at 1646 First Avenue, New York, New York was George Kralik's primary residence. I saw him as much as any other resident that lived in the building.

2. Arpad Klausz [R: 185], who lives in the same building as Mr. Kralik in apartment 15J, stated in an affidavit sworn to on August 5, 2021 that he has personal knowledge that MR. Kralik moved into the Apartment in 2005, and has seen Mr. Kralik since then on a frequent basis in the building.
3. Agnes Perenyi [R: 177-178], a friend of Mr. Kralik's for 31 years, stated in an affidavit sworn to on August 10, 2021 that he knew that Mr. Kralik has resided in the apartment for the relevant period of 2007-2009 because he visited him in the Apartment on many occasions during this period, and thereafter, and cooked dinner for Mr. Kralik in the Apartment several times during the period of 2007-2009.
4. Sebastian Lentini and Anne Lentini [R: 179-182], friends of Mr. Kralik for forty years, stated in affidavits sworn to on August 12, 2021 and August 13, 2021, that they had personal knowledge that Mr. Kralik has

lived in the Apartment as his primary residence as they visited him in the Apartment many times.

5. Daniel Joyce [R: 183], a friend of Mr. Kralik, for ten years, stated in an affidavit sworn to on August 5, 2021 that Mr. Kralik told him in 2005 that he was moving into the Apartment to take care of his mother, and that Mr. Joyce visited him in the Apartment thereafter during the relevant period, and also knew from conversations with Mr. Kralik that Mr. Kralik was living in the Apartment as his primary residence.
6. Mr. Kralik submitted two affidavits in this case:
  - (a) In the first one, sworn to on November 23, 2020 [R: 168-170], Mr. Kralik detailed his moving into the Apartment as his primary residence in 2005. He further stated that his wife had an apartment at 239 East 79<sup>th</sup> Street, Apartment 11N, NY, NY and that Mr. Kralik did not live there, and further explained that he did not mean to state in a 2016 affidavit filed in a lawsuit involving the dental office that he lives in that building. Rather, what he meant in that 2016 affidavit is that he spends a lot of time in that building and knows it well because his dental practice is located there, but he has not slept in any apartment in that building since 2005.



- (b) In Mr. Kralik's second affidavit, sworn to on August 5, 2021 [R: 187-188], he responded to the affidavit of the superintendent Jonh Weafer, who has been employed by the Cooperative since 2013. Mr. Weafer claimed in his own affidavit that Mr. Kralik has not been living in the Apartment as his primary residence since 2013, which is when Mr. Weafer started working for the Cooperative. Mr. Kralik states in his affidavit that he spoke with Mr. Weafer after he submitted the affidavit, and Mr. Weafer admitted to him that he knew Mr. Kralik has been living in the Apartment since Mr. Weafer started working in the building in 2013, but that the Cooperative forced him to submit the affidavit. Mr. Kralik further states in the affidavit that he spoke to several of the Cooperative's employees in the building and a board member who could attest that he has lived in the Apartment as his primary residence, but they were too worried to get involved in the case.
7. Mr. Kralik's wife, Sara Bayer Kralik, stated in an affidavit sworn to on November 24, 2020 [R: 171] that Mr. Kralik moved back to the Apartment in May 2005, and since then, has not slept at apartment 11N at 239 East 79<sup>th</sup> Street, NY, NY.

## THE PETITION SHOULD BE GRANTED

This Petition should be granted based on the Cooperative's initial assent to Petitioner's succession application during his long-term tenancy in the apartment, HPD's failure to review the Cooperative's approval of the application, and then its subsequent denial without giving the Petitioner an opportunity to be heard at trial.

It is well settled that an administrative agency is invested only with those powers expressly conferred by its authorizing statute. Matter of Shankman v. Axelrod, 73 N.Y.2d 203, 538 N.Y.S.783 (1989); Matter of Memorial Hosp v. Axelrod, 68 N.Y.2d 958, 960, 503 N.E.2d 97 (1986). Pursuant to the New York City Charter §1802 (6)(d) and Private Housing Finance Law §2 [15], the Commissioner of HPD represents the City in carrying out the provisions of the Mitchell-Lama Law, and acts as and exercises the powers, rights and duties that the Mitchell-Lama Law vests in the "supervising agency". The rules promulgated by HPD in carrying out its duties and obligations as the "supervising agency" under the Mitchell-Lama Law, are set forth in Chapter 3 of Title 28 of the Rules of the City of New York (RCNY). Thus, pursuant to the Charter provision and laws cited here, HPD is statutorily required to enforce the Mitchell-Lama Law and regulations, regardless of any actions or acquiescence by a cooperative and the other limited-profit housing companies it supervises. Matter of Schorr v. New York City Dept. of Hous. Preserv. & Dev., 10 N.Y.3d 776, 886 N.E.2d 762 (2008). HPD failed to do so in the case at bar.

When a cooperative in Mitchell-Lama Housing considers a succession application, they must, within 30 days of receipt of the application, either deny the application and notify the applicant within 30 days of the denial, or forward the application to HPD for their approval. 28 RCNY 3-02(p)(8); Matter of Cadman Plaza N., Inc. v. N.Y. City Dept. of Hous. Pres. & Dev., 290 A.D.2d 344, 737 N.Y.S.2d 590 (1<sup>st</sup> Dept. 2002).

Neither 28 RCNY 3-02(p)(8) nor any other parts of the Mitchell-Lama Law provide any scenario for what should occur if HPD fails to review a Cooperative's approval of a tenant's succession application, as they are required to do under 28 RCNY 3-02(p)(8). Nor is there even any provision for a tenant's remedies or rights to appeal if a cooperative approves the succession application and HPD then decides to reject the application for whatever reason. Indeed, there are no published rulings where a cooperative approves a succession application and then HPD denies the approval – leading one to believe they are routinely “rubber stamped” by HPD absent a showing of fraud or illegality.

Pursuant to this Court's ruling in Loper Bright Enterprises v. Raimondo, 144 S.Ct. 224, 219 L. Ed 2d 832 (2024), the courts should have exercised their independent authority and ruled that HPD did not act within its statutory authority based on the facts set forth above. Since the statutory language here is silent as to what should occur when HPD fails to act on a cooperative approval of a succession claim but the legislative intent of the Mitchel-Lama Law is clear,

this Court should intervene and grant Petitioner succession rights.

Regulations providing for succession rights to Mitchell-Lama apartments serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household. Notices of Emergency/Proposed Rule Making, NY Reg, Nov. 29, 1989 at 23-29; Matter of Murphy v. New York State Div. of Hous. & Community Renewal, 21 NY 3d 649, 977 N.Y.S.2d 161 (2013). A goal of the statutory scheme for succession in Mitchell-Lama apartments is to alleviate the harsh consequences of the death or departure of the tenant for their family members. Matter of Murphy v. New York State Div. of Hous. & Community Renewal, 21 NY 3d 649, 977 N.Y.S.2d 161 (2013). These purposes are served in the case at bar, as Mr. Kralik has been living in the Apartment for almost 20 years, since 2005, and it is a close family member, his mother, who passed away. Allowing HPD to do nothing on a succession application after a cooperative approves it, and then having HPD meet unilaterally with the cooperative over three years later, which somehow led to the reversal of the Cooperative's approval decision, is not a process or a result contemplated by the Mitchell Lama Laws and should not be countenanced by this Court.

This Court's intervention in favor of the Petitioner is further supported by the fact that succession rights should be granted because the Cooperative knew of and implicitly and explicitly consented to Mr. Kralik's tenancy. Matter of Porter v.

New York City Hous. Auth., 169 AD3d 455, 461, 95 N.Y.S.3d 2 (1<sup>st</sup> Dept. 2019); Matter of Cadalzo v. Russ, 195 A.D.3d 463, 144 N.Y.S.3d 861 (1<sup>st</sup> Dept. 2021). Mr. Kralik submitted succession requests to the Cooperative from 2009 onward. After years of ignoring him (with the exception of providing verbal consent to the succession in May 2014) the Cooperative consented to his succession rights in the July 27, 2017 Memorandum to him from the managing agent. As stated earlier, in that 2017 Memorandum, which listed as its subject “Stock Change”, they stated that they were submitting the succession application to HPD for their approval. This consent, along with the Cooperative’s acceptance of maintenance from him from 2005-2022 and repeated confirmation that he is a shareholder in various letters to him over the years, such as the one wrongfully alleging that he is subletting the Apartment, as well as the verbal consent to the succession in May 2014, are all evidence of the Cooperative’s consent to his succession rights. In sum, such consent plus the subsequent silence by HPD should constitute a final consent to succession pursuant to the cases cited above.

A second reason why this Petition should be granted is that Petitioner was not given a right to a trial or a jury trial by the administrative agency, in violation of the Court’s ruling in SEC v. Tarkesy, 144 S.Ct. 2117, 219 L.Ed.2d 650 (2023). It must be emphasized that the Cooperative’s consent over the years and in 2017 to Petitioner’s tenancy was not simply an accident. The preponderance of evidence shows a strong succession claim by the Petitioner, notwithstanding a few weaknesses stated in the

Appellate Division ruling in the case at bar. The undisputed facts are that Mr. Kralik is the son of the deceased Tenant of Record, Marta Kralik, that she passed away on February 20, 2009 [R: 144], and that Mr. Kralik is a senior citizen and thus needs to show only one year of co-residency with his mother. Mr. Kralik showed that he lived with his mother in the Apartment, as their primary residence, from May 2005 until her death, which was almost four times the required amount of time needed for his succession claim. He submitted tax returns, income affidavits, driver's licenses, voting records, a social security statement, affidavits of not only friends and neighbors but also the former superintendent/handyman of the Cooperative, all showing his primary residence at the Apartment for the relevant period and thereafter.<sup>3</sup>

---

<sup>3</sup> Even if the Cooperative had not previously consented to the succession, it is respectfully submitted that Mr. Kralik still should have won his succession claim after the Cooperative and HPD wrongfully decided to rule upon it again. The burden of proof is on the applicant in a succession claim. 28 RCNY 3-02(p)(3). In analogous succession claims involving rent stabilized apartments, courts have found that the burden is on the successor tenant to establish succession rights by a "preponderance of the evidence." 300 E. 34th St. Co. v Habeeb, 248 AD2d 50 (1st Dept. 1997); 1234 Pac. Mgmt. v Jefferson, 803 NYS2d 19 (Civ Ct, Kings County 2005) *citing* Cox v J.D. Realty Associates, 217 AD2d 179 (1st Dept. 1995). Under a preponderance standard, a successor tenant will meet their burden of proof by showing that just more than fifty (50%) percent of the evidence weighs in her favor. When that occurs, the successor tenant must prevail, because they have met their burden of proof. See Habeeb, 248 AD2d 50.

A single document – such as the failure to file a required income affidavit - should not be determinative in a succession case involving a Mitchell Lama apartment, where there is ample evidence that the succession applicant lived in the apartment for

## CONCLUSION

For these reasons, the Petition should be granted, and the Court should award to Petitioner any other relief that is just and proper.

Respectfully submitted,

/s/Yoram Silagy

Yoram Silagy

*Counsel of Record*

VERNON & GINSBURG, LLP

261 Madison Avenue, 26<sup>th</sup> Fl.

New York, NY 10016

(212) 949-7300

ysilagy@vgllp.com

September 18, 2024

---

the required two-year period prior to the family member/tenant of record's vacating the apartment. Matter of Murphy v. New York State Div. of Hous. & Community Renewal, 21 NY 3d 649, 977 N.Y.S.2d 161 (2013). In the case at bar, as mentioned above, most of the relevant documents supported Mr. Kralik's claim of permanent residency in the Apartment since 2005.