

APPENDIX A

A Neutral
As of: September 17, 2024 6:10 AM Z

Kralik v. N. Y. City Dept. of Hous. Preserv. & Dev.

Court of Appeals of New York

June 20, 2024, Decided

Motion No: 2024-14

Reporter

2024 N.Y. LEXIS 872 *; 41 N.Y.3d 910; 213 N.Y.S.3d 262; 2024 NY Slip Op 69738

In the Matter of George Kralik, etc., Appellant, v New York City Department of Housing Preservation & Development et al., Respondents.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: *Matter of Kralik v. New York City Dept. of Hous. Preserv. & Dev., 223 A.D.3d 468, 203 N.Y.S.3d 537, 2024 N.Y. App. Div. LEXIS 134 (Jan. 11, 2024)*

Opinion

[*1] Motion for leave to appeal denied.

End of Document

APPENDIX B

A Neutral

As of: September 17, 2024 6:11 AM Z

Matter of Kralik v. New York City Dept. of Hous. Preserv. & Dev.

Supreme Court of New York, Appellate Division,
First Department

January 11, 2024, Decided;
January 11, 2024, Entered

Index No. 154431/22, Appeal No. 1394,
Case No. 2023-01324

Reporter

223 A.D.3d 468 *; 203 N.Y.S.3d 537 **; 2024 N.Y.
App. Div. LEXIS 134 ***; 2024 NY Slip Op
00135 ****

[**1]** In the Matter of George Kralik, Appellant, v
New York City Department of Housing Preservation
& Development et al., Respondents.

Subsequent History: As corrected through
Wednesday, March 6, 2024.

Leave to appeal denied by *Matter of George Kralik v. N. Y. City Dept. of Hous. Preserv. & Dev., 2024 N.Y. LEXIS 872 (N.Y., June 20, 2024)*

Prior History: *Kralik v. New York City Dept. of Hous. Preserv. & Dev., 2022 N.Y. Misc. LEXIS 10585 (N.Y. Sup. Ct., Oct. 18, 2022)*

Core Terms

apartment, housing, primary residence, credibility, documents, rights, lived, sworn

Headnotes/Summary

Headnotes

Public Housing — Succession Rights — Primary Residency Requirements — Failure to Prove Residence in Year Immediately Preceding Mother's Death

Counsel: Vernon & Ginsburg, LLP, New York (Yoram Silagy of counsel), for appellant.

Sylvia O. Hinds-Radix, Corporation Counsel, New York (Hanna J. Sarokin of counsel), for New York City Department of Housing Preservation and Development, respondent.

Kellner Herlihy Getty & Friedman, LLP, New York (Derrick M. Ng of counsel), for Tri-Faith Housing Company, Inc., respondent.

Judges: Concur—Kern, J.P., Oing, Singh, Kapnick, O'Neill Levy, JJ.

Opinion

[**537] [*468] Judgment (denominated an order), Supreme Court, New York [*469] County (Laurence L. Love, J.), entered October 19, 2022, denying the petition to annul the determination of respondent New York City Department [**538] of Housing Preservation & Development (HPD), dated March 16, 2022, which denied petitioner George Kralik (Kralik) successor rights to his mother's Mitchell-Lama apartment (apartment 7G) in respondent Tri-Faith Housing Company, Inc.'s building, and dismissing the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

HPD determinations regarding succession rights must be upheld if they are rational (*Matter of Halcomb v New York City Dept. of Hous. Preserv. & Dev.*, 187 AD3d 673, 673, 135 N.Y.S.3d 366 [1st Dept 2020]; *Matter of Broussard v New York City Dept. of Hous. Preserv. & Dev.*, 170 AD3d 563, 563, 94 N.Y.S.3d 838 [1st Dept 2019]). Kralik had the burden to demonstrate that he lived in his mother's apartment as his primary residence from February 20, 2008, to February 20, 2009—the year before [***2] his mother passed (*28 RCNY 3-02 [n] [4] [iv]*; [p] [3], [6]; *Matter of Pietropolo v New York City Dept. of Hous. Preserv. & Dev.*, 39 AD3d 406, 406, 836 N.Y.S.2d 16 [1st Dept 2007]). Income affidavits alone are insufficient to establish primary residency, and Kralik's own evidence either called his credibility into question or failed to prove his residence (*Broussard*, 170 AD3d at 563). Specifically,

the tax returns for 2007 through 2009 indicated that apartment 7G was the residence of Kralik and his wife, even though his wife's November 24, 2020 sworn affidavit stated that she never resided there; the driver's license and voter registration pre-dated Kralik's 2005 move into apartment 7G; the documents relating to car insurance and parking tax exemption were not only in the names of Kralik and his spouse, but, based on prior litigation between the parties, Kralik kept his car in the garage owned by the housing company; and Kralik's submitted bank statement showed modest use of the checking account with no monthly deposits.

Aside from the above documents, Kralik's statement in his May 24, 2016 affidavit submitted to Supreme Court, New York in a separate litigation, that he maintained a different primary residence, provided an additional basis for denial (see *Matter of Lewis v Dayton Beach Park #1 Corp.*, 153 AD3d 1176, 1176-1177, 60 N.Y.S.3d 668 [1st Dept 2017]). The Hearing Officer rationally rejected Kralik's attempt to disavow that sworn statement with a new affidavit [***3] dated November 23, 2020, in which he argued that his 2016 statement was meant to convey only that he worked in the 79th Street building, and not lived there, as not credible and self-serving (see *Matter of Brennan v Kelly*, 111 AD3d 407, 408, [*470] 974 N.Y.S.2d 374 [1st Dept 2013]). HPD is statutorily required to enforce the Mitchell-Lama Law, "regardless of any actions or acquiescence by" the private housing company (*Matter of Schorr v New York City Dept. of Hous. Preserv. & Dev.*, 10 NY3d 776, 778, 886 N.E.2d 762, 857 N.Y.S.2d 1 [2008]).

Concur—Kern, J.P., Oing, Singh, Kapnick [****2] , O'Neill Levy, JJ.

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APPENDIX C

A Neutral

As of: September 17, 2024 6:12 AM Z

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

Supreme Court of New York, New York County

October 18, 2022, Decided

Index No. 154431/2022

Reporter

2022 N.Y. Misc. LEXIS 10585 *; 2022 NY Slip Op 33595(U) **

[**1] GEORGE KRALIK, Petitioner, - v - NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT, TRI-FAITH HOUSING COMPANY, INC., Respondent.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Subsequent History: Reported at *Kralik v. N.Y. City Dep't of Hous. Preserv.*, 2022 NYLJ LEXIS 1937 (Oct. 18, 2022)

Magistrate's recommendation at, Findings of fact/conclusions of law at, Sanctions allowed by, Habeas corpus proceeding at, Habeas corpus proceeding at, Sentence imposed by, Post-conviction proceeding at, Post-conviction proceeding at *Matter of Kralik v. New York City Dept. of Hous. Preserv. &*

Dev., 2024 N.Y. App. Div. LEXIS 134 (N.Y. App. Div. 1st Dep't, Jan. 11, 2024)

Core Terms

Apartment, succession, documents, rights, residency, tenant

Judges: [*1] PRESENT: HON. LAURENCE L. LOVE, J.S.C.

Opinion by: LAURENCE L. LOVE

Opinion

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the instant Petition is resolved as follows:

Petitioner commenced the instant Petition by filing same on May 23, 2022, seeking an Order reversing and annulling the Decision of the New York City Department of Housing Preservation & Development (“HPD”) dated March 16, 2022 (“Decision”) that denied the succession rights appeal of Petitioner George Kralik (“Kralik”) for his home located at 1646 First Avenue, Apt 7G, New York, NY 10028 (the “Apartment”).

As alleged in the Petition, Petitioner is a resident of the Mitchell Lama coop Apartment 7G in the Tri-Faith Housing Company, Inc's ("Co-op") building at 1646 First Avenue, New York, New York. Kralik, a senior citizen as defined relevant to this action, was the son of the deceased Tenant of Record, Marta Kralik, who passed away on February 20, 2009. Petitioner alleges that he lived with his mother from 2005 until 2009 [*2] and as such needed to show only one year of co-residency in order to claim succession rights in the Apartment. At the time of his mother's death, [**2] Petitioner submitted a succession application to the Co-op and thereafter paid the maintenance charges on the Apartment.

In an attorney letter dated August 12, 2020, responding to Petitioner's Application for Succession, same was denied based upon alleged inconsistencies regarding Petitioner's residency at 239 East 79th Street, Apt. 11N. Said letter lists the following facts: Kralik appears on the 2006, 2007, and 2008. All three affidavits were apparently signed by Kralik as power of attorney for his mother. Kralik also appears on the income affidavits in prior years where he filed his taxes from a different address. Kralik and his wife, Sarah Kralik are the proprietary lessees and shareholders of Apartments 1A, 11N and 16E in the building located at 239 East 79th Street. Kralik submitted a affidavit to the Supreme Court, New York County in *George Kralik v. 239 East 79th Owners Corp*, Index No. 154698 /2016, on or about May 31, 2016, that states, in reference to the East 79th Street building: "I know about the behavior of the doormen since [*3] I spend my life in the

Building; in addition to work there, I live in apartment 11N of the Building since November 15, 1984." Kralik has been registered to vote at the Apartment since 1990 and his Driver License, issued March 7, 2012 also indicates the Apartment as his address. Kralik's tax returns for the relevant years, filed jointly with Sarah Kralik, and the Kraliks' car insurance and parking tax exemption list the Apartment as address despite the fact that Sarah Kralik resides in the East 79th Street building. Said letter also attaches three letters from the Co-op's management companies, the latest of which is dated October 24, 2007, informing Petitioner that he does not live in the apartment and that listing himself on the income affidavit does not provide a basis for succession rights, demanding Petitioner's vacatur.

In a letter dated September 10, 2020, Kralik appealed said denial asserting claims of waiver, estoppel and laches. Said letter attaches Petitioner's Board of Elections voting history, tax [**3] return cover pages for the years 2007, 2008 and 2009, Driver's License, Income affidavits for the years 2006, 2007, 2008, bank statements, insurance statements, vehicle registration, [*4] application for a parking tax exemption, a letter from Petitioner's tax accountant and a letter dated April 9, 2009 from the Co-op's management company. Petitioner highlights the April 9 letter as confirming that he was a shareholder of the Co-op however the Court notes that the letter specifically accuses Petitioner of not being Petitioner's primary residence as he had allegedly sublet the Apartment. Thereafter, Petitioner supplemented his documentation with the affidavit of Sara Kralik

stating that in 2005 Kralik moved to the Apartment, taking all of his personal belongings, has not slept at the East 79th Street apartment since and that the affiant has not visited Kralik at the Apartment since he moved there. Petitioner further submits the affidavit of Agnes Cespany, his office manager and assistant, who states that she helped Petitioner move to the Apartment in 2005 and has come to the Apartment every two weeks since to cook and clean. Petitioner also submits his own affidavit explaining the presence of another couple, Mr. and Mrs. Kajdi, who lived in the Apartment's third bedroom from 2001 until 2010.

In a letter dated July 14, 2021, the Co-op replied to the September 10, 2020 letter, **[*5]** detailing why Kralik's allegations are not credible. Specifically said letter highlights that the tax returns indicate that Sara Kralik lived at the apartment despite her testimony otherwise, that the vehicle related proofs arise from Kralik's garaging of his vehicle at the Co-op since 1989 and not due to his residency. The Co-op further submitted the affidavit of John Weafer, the Co-op's superintendent who stated that Kralik never lived in the Apartment, but sublet same to a woman and her daughter. The Co-op also submitted another letter, dated May 15, 2006, admonishing Petitioner for submitting an inaccurate NYC Income affidavit, stating "YOU DO NOT LIVE AT **[**4]** 1646 FIRST AVENUE." Thereafter, Petitioner submitted further affidavits attesting that he does live in the Apartment.

In a “Denial of Succession Rights and Certificate of Eviction, dated March 16, 2022, Administrative Hearing Officer Frances Lippa reasoned as follows: Pursuant to 28 RCNY 3-02(p), Petitioner “must prove that he resided in the subject apartment as his primary residence with the tenant for at least the one year immediately prior to the date the tenant permanently vacated the subject apartment and that he was included as an occupant [*6] of the subject apartment on the relevant income affidavits.” “the relevant co-residency period in this succession rights appeal is February 20, 2008 through February 20,2009.” Kralik was included as an occupant of the subject apartment on the income affidavits for calendar year 2008 which George Kralik signed on behalf of the tenant.” Since his mother’s death, “Mr. Kralik repeatedly requested succession rights from the housing company.” Lippa noted the April 9, 2009 letter questioning Kralik’s primary residency. Lippa further considered the affidavits of Sara Kralik and the relevant bank statement. Lippa specifically found the NYC parking tax documents, NYS tax documents and car insurance documents lacked credibility as Sara Kralik’s name appeared on them. Documents prior to 2005 such as the voter registration and driver’s license further lacked credibility as they predate the alleged occupancy. An apparently determining factor was the May 24, 2016 affidavit stating “I know about the behavior of the doormen since I spend my life in the Building; in addition to work there, I live in apartment 11N of the Building since November 15. 1984.” Lippa specifically found that “ Mr. Kratik’s [*7] admission that he resided in unit 11 N at 239 on East 79th Street since 1984,

presumably made without regard to a claim for succession rights to the subject apartment, outweighs documents that reflect the subject apartment as his address and the statements from individuals, including his spouse, who attested to his residency in the subject apartment.” The [**5] decision further provides reasoning that the delay did not prejudice Kralik as he retained use of an apartment that he was not entitled to for a decade.

The applicable standard in an Article 78 proceeding is “whether [the] determination was made in violation of lawful procedure, was affected by error of law or was arbitrary and capricious or an abuse of discretion.” CPLR § 7803(3). Administrative action is arbitrary when it is taken “without sound basis in reason” and “without regard to the facts.” Pell v. Bd. of Educ., 34 N.Y.2d 222, 231, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974); see Ward v. City of Long Beach, 20 N.Y.3d 1042, 1043, 985 N.E.2d 898, 962 N.Y.S.2d 587 (2013). “[T]he Court may not upset the agency’s determination in the absence of a finding...that the determination had no rational basis.” Mid-State Mgmt. Corp. v. New York City Conciliation and Appeals Bd., 112 A.D.2d 72, 76, 491 N.Y.S.2d 634 (1st Dep’t 1985), affirmed 66 N.Y.2d 1032, 489 N.E.2d 1300, 499 N.Y.S.2d 398 (1985). While Petitioner may disagree with the weight given to the evidence by AHO Lippa, it cannot be said that the determination had no rational basis. On the second page of the Petition, Petitioner argues [**8] “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, 999 N.E.2d 524, 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*.” Allowing Petitioner to remain in the Apartment, when he owns at least three other properties simply does not serve the statutory scheme.

ORDERED that the instant Petition is DENIED in its entirety.

10/18/2022

DATE

/s/ Laurence L. Love

LAURENCE L. LOVE, J.S.C.

End of Document

APPENDIX D

Civil Court of the City of New York

County of New York

Part: Part H. Room: 810

Index #:

LT-308098-22/NY

Decision/Order

Motion Seq #: 1, 5, 6

Tri-Faith Housing Company Inc

Petitioner(s)

-against-

George Kralik; "John" "Doe";

"Jane" "Doe"

Present: Vanessa Fang

Judge

Respondent(s)

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this motion by petitioner to lift the stay, restore this matter, and issue a decision on petitioner's motion for summary judgment and of this cross motion by respondent for a further stay.

PAPERS

NUMBERED

Notice of Motion and

Affidavits/Affirmations Annexed

1, 2b, 4

Order to Show Cause and

Affidavits/Affirmations Annexed

Answering Affidavits/Affirmations

2a, 3b, 5

Replying Affidavits/Affirmations

3a, 6

Exhibits

Stipulations

Other

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

This is a licensee proceeding in which the former cooperator passed away on February 20, 2009, and respondent seeks succession rights to the subject premises, which is a cooperative unit subject to the Private Housing Finance Law and HPD regulations.

Petitioner denied succession rights to respondent on August 12, 2020. HPD issued a certificate of eviction on March 16, 2022. Respondent filed an Article 78 which was dismissed on October 18, 2022. Respondent appealed and the Appellate Division affirmed the dismissal on January 11, 2024. Respondent sought leave to appeal to the Court of Appeals which was denied on June 20, 2024. This proceeding, which was commenced in/about June 2022 has been stayed pending these appeals with a provision for payment of ongoing use and occupancy.

Petition now moves again to restore this proceeding, lift the stay, and for determination on petitioner's summary judgment motion filed on December 2022. Respondent opposes and cross-moves for a stay pending a determination of respondent's petition for a writ of certiorari before the United States Supreme Court.

Respondent has exhausted his appeals in New York. Thus, there is no basis for a further stay of this proceeding. Accordingly, petitioner's motion to restore and lift the stay is granted and Respondent's cross-motion for a stay is denied.

Petitioner also moves for summary judgment. Respondent filed an answer dated October 24, 2022.

Respondent opposes and asserts that he is a month-to-month tenant based on petitioner's acceptance of his maintenance checks. This assertion has been explicitly rejected as "estoppel cannot be invoked against HPD to prevent it from discharging its statutory duty to enforce the provisions of the Mitchell Lama Law (citations omitted). The payment of rent by respondents does not legitimize their occupation of the apartment." Masaryk Towers Corp. v. Feng, 63 Misc. 3d 133(A)(AT1 2019).

HPD has exclusive jurisdiction to adjudicate succession claims in Mitchell-Lama units. Id. HPD determinations denying succession rights and its issuance of a certificate of eviction cannot be collaterally attacked in Housing Court. Id. Based on the documentary evidence presented and Petitioners, affidavit and support, petitioner has established entitlement to judgment as a matter of law. Accordingly, petitioner's motion for summary judgment is granted.

Accordingly, petitioner's motions are granted and respondents cross-motion is denied. Petitioner is granted a final judgment of possession as against George Kralik. The warrant of eviction may issue forthwith but the execution of the warrant is stayed through August 31, 2024 for respondent to vacate, provided August 2024 use and occupancy at \$716/mo is paid by August 10, 2024, EED September 3, 2024.