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2021-07-20

### Cozzolino v. N.Y.S. Div. of Hous. & Cmty. Renewal

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART IAS MOTION 4

*Justice*

-----X

BLAISE COZZOLINO,

Plaintiff,

- v -

THE NEW YORK STATE DIVISION OF HOUSING AND  
COMMUNITY RENEWAL, TRUMP PARK AVENUE  
LLC, THE TRUMP CORPORATION,

Defendant.

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INDEX NO. 161368/2020

MOTION DATE 12/30/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32

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

Petitioner seeks to reverse or modify respondent Division of Housing and Community Renewal’s (hereinafter “DHCR”) petition for administrative review (PAR) determination which reversed the DHCR’s initial March 3, 2020 determination. Respondent DHCR opposes and cross-moves to remit the matter to DHCR for further proceedings. Respondent-intervenors Trump Park Avenue and The Trump Corporation oppose.

The DHCR’s initial determination granted petitioner succession rights to the tenancy of his same-sex long-term domestic life partner (*see* March 3, 2020 DHCR decision – NYSCEF Doc. No. 4). Petitioner established, via photographs, affidavits, and other evidence, that over their 30-year relationship,

he and the tenant relied on one another for functions of daily life, with petitioner managing the household (cleaning, shopping, mending, etc.), and they held one another out as family, including petitioner maintaining relationships with tenant's children after the tenant's death. Thereafter, the PAR order reversed that determination, finding that petitioner had not established financial interdependence between him and his deceased partner. The PAR order further found, *de novo*, that the photographs submitted by petitioner in the initial determination had been photoshopped or altered – an issue not raised during the initial DHCR proceedings.

As an initial matter, the parties' submissions after February 1, 2021 fail to comply with the Uniform Rules (*see e.g.* failure to include certification of word-count). Failure to comply with the Uniform Rules serves as a basis to deny an application or reject those papers which fail to comply.

Notwithstanding, the Court, in its discretion, addresses the merits of the application.

The standard of review of an agency determination via an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination or whether the determination is

arbitrary and capricious (*Matter of Gilman v. New York State Div. of Housing and Community Renewal*, 99 NY2d 144 [2002]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Peckham v. Calogero*, 12 NY3d 424 [2009]; see also *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). When an agency determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v. Calogero*, 12 NY2d at 431).

Rent Stabilization Code § 2520.6(o)(2) provides factors to be considered in determining succession rights to non-traditional family members, it states, in pertinent part:

Any other person residing with the tenant or permanent tenant in the housing accommodation as a primary or principal residence, respectively, who can prove emotional and financial commitment, and interdependence between such person and the tenant or permanent tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed may include, without limitation such factors as listed below: (i) longevity of the relationship; (ii) sharing of or relying upon each other for payment of household or family expenses and or other common necessities of

life; (iii) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc; (iv) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.; (v) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.; (vi) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions; (vii) regularly performing family functions, such as caring for each other or each other's family members, and/or relying upon each other for daily family services; (viii) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship.

(9 NYCRR § 2520.6[o][2]).

In determining succession rights, the totality of the circumstances contemplated by RSC § 2520 must be considered, and no single factor shall be dispositive (*Braschi v. Stahl Assoc. Co.*, 74 NY2d 201 [1989]; *Matter of 530 Second Ave. Co., LLC v. Zenker*, 160 AD3d 160 [1st Dept 2018]).

Here, petitioner was largely financially dependent on the tenant of record; their living arrangements reflected their dedication and caring to one another with petitioner responsible for the couple's domestic duties; petitioner submitted 50 photographs taken of them and their family over a period of more than 30 years; the tenant's children affirmed that petitioner is a member of the family due to his relationship with the tenant; the tenant's will named petitioner as the sole beneficiary; the tenant repeatedly granted petitioner power of attorney and named petitioner as his medical proxy. These circumstances have been found sufficient, by the Appellate Division, First Department, to warrant granting succession rights (*Matter of 530 Second Ave. Co., LLC v. Zenker*, 160 AD3d 160 [1st Dept 2018]) "Consideration of the factual record in light of the factors listed in the Rent Stabilization Code demonstrates that [petitioner] was family to [the tenant]" (*id.*). As in *Matter of 530 Second Ave*, here, "the evidence received paints a picture of a couple who exhibited many of the behaviors associated with a traditional marriage" (*id.*)

The PAR determination that petitioner failed to establish requisite financial interdependence, and therefore could not establish succession rights, is contrary to law and fact.

As to the factual errors, petitioner established that he paid rent arrears in his own name on the subject apartment while the tenant was unable. Petitioner also established that over his 30-year relationship with tenant, their respective financial contributions shifted. Initially, the tenant was the monied party and primarily contributed to the couple's finances; however, following his incarceration, the tenant was unable to contribute to the couple's finances as he had previously. Furthermore, petitioner established that he had power of attorney over the tenant of record, in effect control over the couple's finances, while the tenant of record was incarcerated.

As to respondent's error of law, no one factor listed in § 2520 is dispositive, as it is "the totality of the relationship as evidence by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control" (*Brasch v. Stahl Assoc. Co.*, 74 NY2d 201, 213). The absence of intermingled finances does not, standing alone, negate succession rights (*RHM Estates v. Hampshire*, 18 AD3d 326 [1st Dept 2005]). The PAR determination, while correctly reciting that no single factor is dispositive, then cited a single factor – the purported lack of financial interdependence as grounds to deny the

succession claim<sup>1</sup>. Furthermore, the PAR determination made *de novo* findings that petitioner had photoshopped the photographs submitted and relied upon during the DHCR's initial determination. No party raised the authenticity of the photographs as an issue at the initial determination, thus, it is beyond cavil that this *de novo* finding of material/issues *de hors* the record violated 9 NYCRR § 2529.6 (RSC § 2529.6). Consequently, the PAR determination is erroneous as a matter of law and fact, and is therefore arbitrary and capricious.

While petitioner asserts that he was held to a higher standard than required by law due to the same-sex nature of his relationship with the tenant, this Court need not determine the basis for the Commissioner's arbitrary and capricious determination, only that the Commissioner acted in such manner. It is inarguable that the Commissioner's determination cannot stand, and indeed respondent DHCR cross-moves to remit the matter to DHCR for further consideration of the factors, despite having already considered same in the PAR determination – tacit acknowledgment that the determination is erroneous, arbitrary, and capricious. The Court declines respondent's invitation to remand the matter for further proceedings as unnecessary. Further consideration of the

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<sup>1</sup> “While it is true that no single factor should be solely determinative under RSC § 2620.6(o)(2), the Commissioner can point to no cases that granted non-traditional family member succession where the complainant and the tenant of record had not demonstrated at the very least some co-mingled finances. None is present here and the succession claim is denied” (PAR determination- NYSCEF Doc. No. 18).



factors already considered by the Commissioner serves no purpose. The evidence here conclusively establishes petitioner's succession rights, as initially found by the DHCR, and a further hearing is redundant.


Accordingly, it is

ORDERED that the petition is granted to the extent of vacating the PAR determination as arbitrary and capricious; and it is further

ORDERED that petitioner is granted succession rights in accordance with the respondent DHCR's March 3, 2020 determination (NYSCEF Doc. No. 19) within 14 days of notice of entry of this decision and order; and it is further

ORDERED that the cross-motion is denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>7/20/2021</u> DATE		 FRANK P. NERVO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE