2024-01-16

Roper v. New York City Department of Housing Preservation and Development

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M **PRESENT**: HON. NICHOLAS W. MOYNE

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CHANEL ROPER

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

Respondent.

INDEX NO. 151213/2023

MOTION DATE 03/13/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

In this special proceeding, brought pursuant to Article 78 of the CPLR, the petitioner, Chanel Roper ("Petitioner"), is challenging a determination made by the respondent, New York City Department of Housing Preservation and Development ("HPD"), which denied her succession rights to the premises located at 129-133 West 147th Street, Apartment 7D (hereinafter "the apartment").

Petitioner contends that she first took occupancy of the apartment in 2011 and lived with the tenant of record, a Ms. Dorothy Roper (hereinafter, "tenant of record"), since that time. Petitioner alleges that she is the wife of Dorothy Roper's grandson, making the tenant of record her grandmother by marriage or grandmother-in-law. Petitioner claims that throughout their extended period of co-habitation, she served as a caregiver and companion to the tenant of record and maintains that their relationship was a close and familial one. According to her death certificate, the tenant of record passed away on April 6, 2020 (*see* NYSCEF Doc. No. 3).

Subsequently, petitioner submitted a succession claim to Esplanade Garden, Inc. ("Esplanade"), which is the managing agent for the apartment. In a letter, dated June 8, 2022, Esplanade informed the petitioner that they had denied her succession claim. Additionally, on June 22, 2022, HPD sent a letter to the petitioner again informing her that Esplanade had denied her succession claim and also informing her of the option to appeal Esplanade's decision to HPD. Soon thereafter, petitioner submitted her appeal of the denial of her succession claim. On December 28, 2022, Hearing Officer Frances Lippa denied the petitioner's appeal on the grounds that a granddaughter-in-law is not considered a family member pursuant to 28 RCNY 3- 02 (p)(2)(ii)(A) and that petitioner failed to prove a financial and emotional interdependence with

the tenant of record that would qualify the petitioner as a "family member" as defined in 28 RCNY §3-02 (p)(2)(ii)(B).

In an Article 78 proceeding, including those challenging succession rights to Mitchell-Lama apartments, the court is required to determine whether a rational basis for the agency's determination exists, or whether the decision is arbitrary and capricious (*see Murphy v New York State Div. of Hous. & Commun. Renewal*, 21 NY3d 649, 652 [2013]). HPD has significant discretion in determining who may succeed to occupancy of a Mitchell-Lama apartment (*Cadman Plaza North v New York City Dep't of Hous., Preservation and Devel.*, 290 AD2d 344, 344 [1st Dept 2002]). The court cannot substitute its own judgment for a rational decision by the hearing officer, even when the court's conclusion is rational and has evidentiary support (*see Olivero v New York City Dep't of Hous. Preservation & Devel.*, 134 AD3d 481, 482 [1st Dept 2015]). However, in reviewing denials of applications for succession rights, courts should keep in mind that a major purpose of the regulations governing succession rights to Mitchell-Lama apartments is to "prevent dislocation of long-term residents due to the vacatur of the head of household" (*Murphy*, 21 NY3d at 653).

The rules for succession rights are set forth at 28 RCNY §3-02 (p). The person claiming succession rights must be related to the tenant of record either in one of the ways specified in §3-02 (p)(2)(ii)(A), or in a non-traditional manner as defined by § 3-02 (p)(2)(ii)(B). It is the latter definition that is at issue here. As defined by the regulations, a "family member" includes various individuals related to the tenant by consanguinity or marriage, or "[a]ny other person residing with the [tenant-of-record] in the housing accommodation as a primary or principal residence who can prove emotional and financial commitment and interdependence between such person and the [tenant-of-record]" (9 NYCRR § 1727-8.2 [a][2][1]). The regulations identify eight factors which are relevant to making such a determination (9 NYCRR § 1727-8.2 [a][2][ii][a-h]). These factors include: (1) longevity of the relationship; (2) sharing the payment of household or family expenses; (3) intermingling of finances; (4) engaging in family-type activities; (5) formalizing of legal obligations; (6) holding themselves out as family members; (7) regularly performing family functions; and (8) engaging in any other pattern of behavior that would evidence the existence of a long-term, emotionally committed relationship between the applicant and the tenant-of-record (*Id.*).

In the challenged determination, Hearing Officer Lippa stated that Petitioner failed to prove entitlement to succession rights to the apartment, based on a finding that: (1) there was no evidence that the tenant and applicant shared or relied on each other for the payment of household expenses or formalized legal obligations or responsibilities to each other in any way; (2) there was no evidence that the tenant and the applicant regularly performed family functions for each other including relying on each other for daily family services; and because (3) there was no evidence that the tenant and the applicant intermingled their finances in any way (*see* NYSCEF Doc. No. 19).

After careful consideration, the Court is granting the petition to the extent of remanding the matter to HPD for further consideration. The Court agrees with the petitioner that the Hearing Officer erred by failing to sufficiently consider all the enumerated factors and by failing to give proper weight to the documentation petitioner submitted in support of her claim that she

and the tenant-of-record had an interdependent relationship. This documentation included Household Income Affidavits for the apartment for the years of 2018 and 2019, listing both the petitioner and the tenant of record and referring to the petitioner as the tenant of record's granddaughter. It appears to the Court as if the Hearing Officer gave the Income Affidavits very little weight or consideration. While it is true that the petitioner was not the tenant of record's biological granddaughter, the fact that the tenant of record referred to her as such in this affidavit strongly suggests that there was a significant emotional and familial relationship between them. It would certainly indicate, as the petitioner suggests, that both the petitioner and the tenant of record held themselves out as family members and had the intention of creating a long-term emotionally committed relationship (*see* 28 RCNY 3-02 [p][2][ii][B][h]).

Hearing Officer Lippa also failed to adequately address the significant disparity in income between the petitioner and the tenant of record. The Household Income Affidavit for 2019 demonstrates that at that time, petitioner had a yearly income of Fifty-Two Thousand Six Hundred Twenty-Five Dollars ($52,625.00), while the tenant of record had a yearly income of Thirteen Thousand Two Hundred Eighty-Four Dollars ($13,284.00), most of which was derived from Social Security benefits. This documentation strongly supports the petitioner's contention that the tenant of record was, at least to some degree, financially dependent on the petitioner and/or that their finances were considerably intermingled. Contrary to the suggestion of the Hearing Officer, the mere fact that their bank accounts were separate is not dispositive or even particularly weighty, given that the applicable regulations do not require joint accounts in order to demonstrate financial interdependence. Further, any comingling of the accounts would be complicated by the fact that the tenant of record relied on Social Security benefits- which are generally not transferrable.

Respondent contends that the entirety of the evidence the petitioner put forth was circumstantial and/or evidence by inference, which is insufficient to prove she was a family member. Respondent claims that the regulations compel the petitioner to put forth additional concrete evidence such as affidavits, documentary proof of joint accounts, household budgets, and the like. Therefore, respondent maintains that the petitioner did not meet her burden under the statute because she failed to provide affidavits from witnesses and/or documentation evidencing patterns of behavior or other actions that is demonstrative of the intent to create a long-term emotionally committed relationship (*see* 28 RCNY § 3-02 [p][2][ii][B][h]). However, the problem with this argument is that it ignores the simple fact that the petitioner had been living with the tenant of record for a lengthy period- at least two years as required, and in all probability, as much as a decade or more. The Court can observe that married persons would not typically live with their grandmother-in-law for an extended period of time absent some emotional connection and/or interdependent relationship. When coupled with the Income Affidavits and the stark disparity of incomes, the evidence of interdependence between the petitioner and the tenant of record would appear to the Court to be quite strong. It also appears to be undisputed at this point that the petitioner provided substantial companionship and care for the tenant of record without receiving any compensation for these services or her time. This is suggestive that her motivation in doing so was out of love and/or familial bond, rather than for any financial or monetary incentive.

In his decision, the Hearing Officer highlighted that according to the HPD definitions, a companion and/or caregiver relationship is not the equivalent of a family relationship- which requires that the tenant and the applicant shared a financial and an emotional commitment and interdependence. Accordingly, that decision found that while Chanel Roper may have had a warm relationship with the tenant, such a relationship is not a family relationship according to the HPD definitions. This is a generalization not supported by any additional analysis. The dividing line between a warm relationship and a familial one was not set forth in the decision and the Court cannot determine the basis for such a distinction in this case. Especially considering that the Hearing Officer indicated that there was no evidence that the tenant and the applicant regularly performed family functions for each other, such as relying on each other for family services or care while also admitting the applicant moved in as a companion and caregiver to the tenant as she was aging and needed some support and that she had a warm relationship with the tenant. As mentioned above, petitioner did not receive compensation for these services. Clearly, a strong inference can be drawn from these facts that there was a relationship between the petitioner and the tenant of record based on emotional commitment and interdependence. It is true that there is no direct evidence such as affidavits or proof of joint accounts. The question becomes whether the petitioner was given a full and fair opportunity to provide such evidence particularly given that there was no hearing and all of the Hearing Officer's findings were based solely on documents or papers.

The Court understands that hearings are not generally required in these proceedings and that HPD has discretion to render determinations without a hearing. In this case, however, the petitioner should have been given an opportunity to clarify and further demonstrate the committed relationship between her and the tenant of record. That did not happen. The lack of a familial relationship under the HPD definitions could hardly have been proven on papers alone. Particularly given the significant evidence, which as further outlined above, tends to support the existence of a familial bond. The information provided in the record does not support the Hearing Officer's conclusions, which amount to only assumptions that are not supported by any sufficient facts. The Hearing Officer could have attempted to develop the record further by holding a hearing, could have asked the petitioner for more information or documentation to better clarify, or could have explained the rationale behind his assumptions that the petitioner's evidentiary submissions, including her caregiving and companionship of the tenant of record, were insufficient to establish her entitlement to succession rights or eligibility as a family member.

If anything, the weight of the evidence submitted, as minimal as there was, supports the petitioner's position. Absent contrary findings, there is compelling evidence within the record which demonstrates the existence of an emotional commitment and interdependence between the petitioner and Ms. Roper. Therefore, while there may be a rational basis for concluding otherwise, the Hearing Officer did not adequately disclose it nor provided the petitioner a fair opportunity to further strengthen her already compelling case.

Broad discretion is not absolute discretion, and, based on this record, it was arbitrary and/or irrational to simply assume that the petitioner's relationship with her grandmother-in-law did not rise to the level required by HPD regulations (*see Matter of Washington v Visnauskas*, 45 Misc3d 418, 425-426 [Sup. Ct. Kings County 2014]). It is undisputed that the petitioner lived

with the tenant of record for a substantial period of time and provided care and services for her. She was listed on the Income Affidavits and there is no evidence that she had used any other address. While the Hearing Officer primarily relied on the lack of intermingling of funds, the absence of this factor alone is insufficient to rebut the claim that the petitioner and the tenant of record has a familial relationship (*see Cozzolino v New York State Division of Housing and Community Renewal*, 204 AD3d 494 [1st Dept 2022]; *RHM Estates v Hampshire*, 18 AD3d 326, 327 [1st Dept 2005]. The Court of Appeals has held that it is in error to rely on the presence or absence of one or more of the eight factors as the determinative factor and it is instead the "totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis control" (*Braschi v Stahl Assoc. Co.*, 74 NY2d 20, 213 [1989]). Therefore, the petition is granted to the extent that the matter is remanded back to the HPD and is otherwise denied.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is granted to the extent of annulling the December 28, 2022 determination by respondent New York City Department of Housing Preservation and Development which denied the appeal of succession rights by petitioner Chanel Roper, and the matter is remanded for a hearing and a new determination consistent with the terms of this decision.

This constitutes the decision and order of this court.

1/16/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE