Mazal Echad LLC v Malykin
2026 NY Slip Op 30655(U)
February 10, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. L&T 307210/25
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D
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MAZAL ECHAD LLC,

Index No. L&T 307210/25

Petitioner,

-against- **DECISION/ORDER**

JACK MALYKIN, JOHN DOE, JANE DOE,

Respondents.
----------X
Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion for summary judgment pursuant to CPLR §§ 3212 and 409(b):

Papers	**Numbered**
Notice of Motion & All Documents Annexed……...….....	1 (NYSCEF #10-20)
Affirmation in Opposition & All Documents Annexed……..	2 (NYSCEF #26-33)
Reply Memorandum of Law & All Documents Annexed…..….	3 (NYSCEF # 34-36)

Upon the foregoing cited papers, the decision and order on respondent's motion is as follows.

PROCEDURAL HISTORY

This summary holdover proceeding based upon respondent's alleged failure to renew a rent-stabilized lease was filed in April 2025. Respondent Jack Malykin ("respondent") appeared through counsel in June 2026 and interposed an answer with counterclaim in August 2025. Respondent now moves for summary judgment and dismissal of the petition. Following the submission of opposition and reply papers, this court heard argument on the motion on February 5, 2026. At argument, the parties consented, without the need for a motion, to the substitution of "Mazal Echad LLC" as petitioner and the amendment of all captions and pleadings therewith.

This Decision/Order memorializes the amendment and substitution formally.

DISCUSSION/CONCLUSION

On a motion for summary judgment, "the proponent . . . must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact[.] . . . Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986] [internal citations omitted]). Respondent asserts that petitioner did not offer him a proper renewal lease based on Rent Guidelines Board (RGB) increases upon his prior monthly rent. Petitioner opposes the motion in all respects and primarily argues that respondent's rent was properly adjusted pursuant to an order and final judgment issued in a New York County Supreme Court class action case, *Casey et al. v Whitehouse Estates, Inc. et al.*, Index No. 111723/2011.[1]

In a failure to renew holdover proceeding involving a rent-stabilized tenancy, it is petitioner's burden to prove that the renewal offer was based on a lawful rent amount (*see Ink 967-969 Willoughby, LLC v Cordero*, 74 Misc 3d 128[A], 2022 NY Slip Op 50063[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022]). The Rent Stabilization Code provides that the renewal offer shall be "at the legal regulated rent permitted for such renewal lease and otherwise on the same terms and conditions as the expiring lease" (RSC § 2523.5(a) (9 NYCRR § 2523.5(a))). A renewal offer that includes a rent that exceeds the legal regulated rent justifies a

[1] A Court of Appeals decision in the case, *Casey v Whitehouse Estates, Inc.*, 39 NY3d 1104 [2023], predated the order and final judgment at issue.

tenant's refusal to sign the renewal lease (*see Cordero*, 2022 NY Slip Op 50063[U], *1-2; *Lexford Props., L.P. v Alter Realty Co., Inc.*, 31 Misc 3d 142[A], 2011 NY Slip Op 50859[U] [App Term, 1st Dept 2011]).

Here, there is no dispute that respondent's initial rent-stabilized lease, with a term of December 1, 2022 to November 30, 2024, had a monthly rent of $868.28. Petitioner asserts in its opposition that this amount was based upon an interim use and occupancy order in the Supreme Court action dated April 13, 2021 (*see* Mansher Aff., ¶ 5 [NYSCEF Doc. 27]; Petitioner's Exhibit C [NYSCEF Doc. 30]). Petitioner further asserts that this amount was superseded by the order and final judgment in the Supreme Court action that was so-ordered by Justice Gerald Lebovits in June 5, 2024 (*see* Mansher Aff., ¶ 4; Petitioner's Exhibits D and E [NYSCEF Docs. 31-32]). Ultimately, the parties' main disagreement is about whether respondent was a class member subject to the order and final judgment.

The June 5, 2024 order and final judgment in the Supreme Court action acknowledged the certification of the class as:

> "[A]ll persons (the 'Class Members') who occupied an apartment that was treated as deregulated by Landlord while Landlord was receiving J-51 tax benefits (a 'Covered Unit'), provided that such a person was an occupant of a Covered Unit on or after the Base Date but before June 30, 2014; or who took occupancy of a Covered Unit after June 30, 2014, and was treated as an unregulated tenant, but after performing the calculation described above it is determined that their initial rent was below the threshold required for high rent vacancy deregulation[.]" (Paragraph B, Page 2 of Order and Final Judgment dated June 5, 2024 [NYSCEF Doc. 30]).

Respondent argues that he is not a class member as defined therein because he took occupancy of his apartment after June 30, 2014, and was *not* treated as an unregulated tenant. In support, he references his initial lease dated November 7, 2022, which includes a rent stabilized

rider [NYSCEF Doc. 14]. Notably, the rent-stabilized rider checks the box stating that "[t]his apartment was rent stabilized when the last tenant moved out" and notes the prior legal regulated rent as $868.28. No increase was taken prior to respondent's tenancy, and the new legal regulated rent was the same amount, $868.28.

While it is well established that rent stabilization coverage cannot be conferred by waiver or estoppel (*see Matter of Trainer v State of N.Y. Div. of Hous. & Community Renewal*, 162 AD3d 461 [1st Dept 2018]; *546 W. 156th St. HDFC v Smalls*, 43 AD3d 7, 11 [1st Dept 2007]), the central question in determining whether respondent was a class member bound by the judgment and final order in the Supreme Court action is simply whether he was "*treated* as an unregulated tenant." (Emphasis added). The original lease, which petitioner does not dispute, acknowledges respondent as a rent-stabilized tenant. Petitioner has not come forth with competent proof that respondent took occupancy of his apartment before June 30, 2014, nor that he was treated as an unregulated tenant at any time between the commencement of his tenancy and Justice Lebovits's June 5, 2024 order and final judgment. While petitioner explains the lease amount as petitioner merely complying with the April 13, 2021 interim order in the Supreme Court action, there is no such indication in the lease itself that the rent-regulatory status or rent amount were provisional or conditional. Therefore, the court does not find that respondent was bound by the terms of the June 5, 2024 order and final judgment as a class member defined therein.

Accordingly, in the absence of a binding Supreme Court order modifying the legal regulated rent for the subject apartment, petitioner was entitled to a Rent Guidelines Board increase and was otherwise obligated to renew respondent's lease on its existing terms and

conditions (*see* RSC [9 NYCRR] § 2523.5(a)). As petitioner's renewal offer here [NYSCEF Doc. 15] included a legal regulated rent amount that far exceeded guidelines increases on the prior legal regulated rent, respondent was justified in failing to execute the renewal lease (*see 125 Ct. St., LLC v Nicholson*, 67 Misc 3d 28, 35-36 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019], *affd sub nom Matter of 125 Ct. St., LLC v Nicholson*, 214 AD3d 723 [2d Dept 2023]; *Cordero*, 2022 NY Slip Op 50063[U], *1; *Housing Dev. Assoc. LLC v Gilpatrick*, 27 Misc 3d 134[A], 2010 NY Slip Op 50740[U], *1 [App Term, 1st Dept 2010]). Upon these determinations, respondent is entitled to summary judgment and the petition is dismissed for lack of a cause of action. The clerk shall issue a judgment dismissing the petition (*see* CPLR § 411).

Respondent's legal fees counterclaim is marked off-calendar without prejudice, subject to a motion upon notice to restore with supporting proof. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: New York, New York
February 10, 2026

HON. CLINTON J. GUTHRIE, J.H.C

APPROVED
CGUTHRIE , 2/10/2026, 9:12:59 AM

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
MOTION SEQ. #: 1	X	GRANTED		DENIED		GRANTED IN PART		OTHER
CHECK IF APPROPRIATE:		SETTLE ORDER		SUBMIT ORDER		STAY CASE
		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE
NOTES							