

<b>91 Real Estate Assoc. LLC v Eskin</b>
2013 NY Slip Op 31181(U)
June 4, 2013
HCIV, New York County
Docket Number: 78814/2012
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART C

\_\_\_\_\_  
91 REAL ESTATE ASSOCIATES LLC, X

Petitioner-Landlord

-against-

**DECISION & ORDER**  
Index No.: L&T 78814/2012

**HON. SABRINA B. KRAUS**

FELICE ESKIN  
241 East 76<sup>th</sup> Street, Apt. 9-I  
NEW YORK, NEW YORK 10021

Respondent-Tenant

\_\_\_\_\_  
X

**BACKGROUND**

The underlying summary holdover proceeding was commenced by **91 REAL ESTATE ASSOCIATES LLC** (Petitioner) against **FELICE ESKIN** (Respondent), the tenant of record based on the allegation that her lease has expired and she is no longer entitled to possession of the Subject Premises.

Respondent has appeared through counsel and filed a written answer which asserts that she is a rent stabilized tenant.

The proceeding was originally returnable on September 25, 2012.

Both parties have moved for summary judgment. On May 30, 2013, the court heard argument and reserved decision.

## MOTIONS

The main issue between the parties is whether Respondent is a rent stabilized tenant. The petition asserts that the premises are exempt because “.. the subject premises (unit) was in a building converted to a co-op and thereafter the unit respondent occupies and is in possession of became deregulated upon the vacancy of the then rent- regulated tenant.”

Respondent has lived in the subject building since 1967. Respondent used to live in apartment 8E. DHCR registrations for 8E show Respondent was listed as the tenant of record from the initial registration in 1984 through 1998. In 1998 the registered rent for Apt. 8E was \$604.16 per month.

In May 1998, Respondent’s landlord and the sponsor of the cooperative conversion, approached Respondent and requested that she move from 8E to the Subject Premises, because a prospective purchaser wished to buy 8E and combine it with 8F. It was agreed that Respondent’s rent regulated status would continue in the Subject Premises, and that her rent would remain the same subject to permissible guidelines increases. This understanding is memorialized in a letter from the former owner to Respondent dated June 4, 1998.

Respondent has been treated as a rent stabilized tenant since that date, and shows DHCR registrations for the Subject Premises, that list her as the rent stabilized tenant of record for the Subject Premises from 1999 through 2012. Respondent was issued rent stabilized lease renewals for said years.

Moreover, in September 2012 DHCR issued an order finding Respondent was entitled to a rent reduction, based on a decrease in services which order was predicated on Respondent’s status as the rent-stabilized tenant of record for the Subject Premises.

The building converted to a cooperative in 1985. Petitioner became a shareholder of the Subject Premises in March 2012, and a few months later instituted this proceeding asserting Respondent's tenancy is subject to termination without cause.

Petitioner does not dispute the facts as asserted by Respondent but argues that as a matter of law, Rent Stabilized status can not be created by agreement and the Subject Premises is exempt.

### DISCUSSION

For the reasons stated below, Respondent's motion to dismiss the proceeding is granted and Petitioner's cross-motion for summary judgment is denied.

A tenant who is entitled to protection from eviction under rent regulation does not lose said protections because he transfers to a different unit, at the request of the landlord or for the landlord's convenience [*143 East 30<sup>th</sup> Street Corp. v Shankman* 10 Misc3d 126(A)(App. Term, 1<sup>st</sup> Dept)].

When a rent controlled or rent regulated tenant exchanges his regulated apartment for an unregulated apartment, and the exchange is made at the request of the landlord and for the benefit of the landlord, the law views it as a mere substitution of regulated housing accommodations and the tenancy remains subject to the protections of rent regulation [*Capone v Weaver* 6 NY2d 302(Ct of Appeals, 1959); *see also Syndicate Building Corp. v. Hide Trading Corp* 13 Misc2d 473 (App. Term, 1<sup>st</sup> Dept)(*if a statutory tenant moves to a different place in the same building at the request of the landlord, and the new premises are decontrolled, the new premises come under control if the new tenancy is a substitution for the former tenancy*); *Widerker v Castro* 188 Misc.2d 571 (*rent controlled status of apartment was transferred to new apartment into which tenants moved at the request of landlord*); *Saad v Elmuza* 12 Misc3d 57

(App Term, 2<sup>nd</sup> and 11<sup>th</sup> Jud Dist)(*when tenant moved from rent controlled apartment on first floor to an apartment on the second floor at the request of prior landlord, rent controlled status transferred to second floor apartment*).

As noted by one court “(i)t would be eminently unfair to the tenant under the circumstances here involved to hold that the landlord as soon as he moved the tenant to the new space could consider that the tenant was no longer a statutory tenant and that the landlord could immediately demand possession of the premises or seek an excessive rental (*Carmel Co v Greater Buffalo Press* 10 Misc2d 514).”

The authority relied upon by Petitioner is not applicable to the case at bar. For example, Petitioner cites *230 Central Park west Associates v Jhirad* 32 Misc3d 140(A) as a case with “nearly identical circumstances” as this proceeding. However, that was a proceeding where the coop conversion was an eviction plan, and the tenants lost their regulated status when they elected not to purchase. In this proceeding, there was a non-eviction plan and Respondent never lost her regulated status by operation of law.

Petitioner’s otherwise unsupported conclusory statement that Respondent’s move was “voluntary and beneficial to her” is insufficient to create a contested issue of fact requiring a trial herein. Petitioner admittedly lacks any first hand knowledge of the facts surrounding the prior owner’s request to move Respondent, and the statement is belied by Respondent’s own first hand knowledge and substantial documentary evidence. Moreover, Petitioner does not argue that there are material questions of fact requiring a trial.

Based on the foregoing, the court finds that Respondent is a rent stabilized tenant and the proceeding is dismissed with prejudice.

This constitutes the decision and order of this court.

Dated: June 4, 2013  
New York, New York

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Hon. Sabrina Kraus  
JHC

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