

**Page v O'Porto Holding Co., Inc.**

2015 NY Slip Op 32726(U)

July 31, 2015

Supreme Court, New York County

Docket Number: 151554/2015

Judge: Arthur F. Engoron

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. Arthur F. Engoron
Justice
PART 37

LAWRENCE PAGE,

Plaintiff,

- v -

O'PORTO HOLDING COMPANY, INC.,

Defendant.

INDEX NO. 151554/2015

DECISION AND ORDER

Sequence No. 001

Arthur F. Engoron, J.S.C.

In compliance with CPLR 2219(a), this Court states that the following paper, number 1, was used on plaintiff's motion for a default judgment:

Paper Numbered:

Notice of Motion - Affirmation - Affidavit - Exhibits . . . . . 1

In this action, plaintiff Lawrence Page, a rent-stabilized tenant, sues his landlord, defendant O'Porto Holding Company, Inc., to recover an alleged "rent overcharge" for the period from March 2011 through November 2013 in the sum of \$18,431.18, plus treble damages in the sum of \$55,293.54 (\$18,431.18 x 3), minus a credit for unpaid rent from December 2013 through February 2015, plus interest. On February 17, 2015, the summons and complaint were filed with the court. That same day, the summons and complaint were served upon defendant via the Secretary of State, making its answer due on March 9, 2015, twenty days thereafter. See CPLR 320. Defendant has not appeared in this action or answered the complaint. Plaintiff now moves for a default judgment against defendant in the alleged "sum certain" of \$61,023.77. Defendant has not opposed the motion.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE DATED:

J.S.C.

Notwithstanding defendant's default herein, the motion is denied and the case dismissed without prejudice pending plaintiff's prompt submission of his rent overcharge claim to the DHCR for determination. While this Court has jurisdiction to determine the amount of the alleged overpayment and whether treble damages are warranted for defendant's willful conduct (see McKinney's Uncons. Laws of N.Y. § 8591(5)), the issues are more appropriately determined by the DHCR pursuant to the doctrine of primary jurisdiction, "which represents an effort to 'co-ordinate the relationship between courts and administrative agencies,' [and] generally enjoins courts having concurrent jurisdiction to refrain from adjudicating disputes within an administrative agency's authority, particularly where the agency's specialized experience and technical expertise is involved." Sohn v Calderon, 78 NY2d 755, 768 (1991); Olsen v Stellar West 110, LLC, 96 AD3d 440, 441-442 (1st Dep't 2012) (rent overcharge complaint dismissed without prejudice; "pursuant to the doctrine of primary jurisdiction, we believe that the matter should be determined by DHCR, given its expertise in rent regulation"). The Court also notes in passing that plaintiff failed to establish entitlement to judgment in a sum certain as his damages calculation is inscrutable, and it appears that the parties are or were involved in other litigation which may involve similar issues and claims.

Accordingly, plaintiff's motion is denied. The Clerk is directed to enter judgment dismissing the complaint without prejudice.

Dated: July 31, 2015

Arthur F. Engoron, J.S.C.

Check one: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION
Check if appropriate: [ ] DO NOT POST [ ] REFERENCE