

150 E. Third St., LLC v Ryan
2020 NY Slip Op 34477(U)
August 18, 2020
Civil Court of the City of New York, New York County
Docket Number: L&T 79778/17
Judge: Timmie Erin Elsner
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART N

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150 E. THIRD ST., LLC,

Petitioner-Landlord,

-against-

L&T Index No. 79778/17

TAYLOR RYAN,
SELINA GLADYS,

Respondents-Tenants,

DECISION / ORDER

“JOHN DOE” and “JANE DOE,”

Respondents-Undertenants.

PREMISES: Apartment 3B
150 East 3rd Street
New York, New York 10009
-----X

HON. TIMMIÉ ERIN ELSNER, J.H.C.

Recitation, as required by *CPLR § 2219(A)*, of the papers considered in the review of petitioner’s motion to: modify the court’s Decision/Order, dated March 9, 2020, pursuant to *CPLR § 4404(b)*; denying respondents’ Order to Settle; and for such other and further relief as this Court deems just and proper and respondents’ cross-motion to modify the court’s Decision/Order, dated March 9, 2020:

Papers.	Numbered
Petitioner’s Notice of Motion; Affirmation in Support; and Annexed Exhibits.....	1
Respondents’ Cross-Motion and Affirmation in Support of its Cross-Motion and in Opposition to Petitioner’s Motion.....	2
Petitioner’s Affirmation in Opposition and in Further Support.....	3
Respondents’ Affirmation in Reply.....	4

Upon the foregoing papers, the Decision/Order of this Court is as follows:

PROCEDURAL HISTORY & STIPULATED FACTS

The underlying facts and procedural history of this matter, have been set forth in detail in the court’s March 9, 2020 decision and order, and are incorporated in this decision by reference.

LEGAL ANALYSIS

In this proceeding, both parties move to modify the court’s March 9, 2020 decision (“decision”) based upon *CPLR § 4404(b)* which provides that, after a trial:

“[U]pon the motion of any party or on its own initiative, the court may set aside its decision or any judgment entered thereon. It may make new findings of fact or conclusions of law, with or without taking additional testimony, render a new decision and direct entry of judgment, or it may order a new trial of a cause of action or separable issue.

The basis for the motions are recent appellate rulings which alter the analysis courts are required to utilize in assessing a tenant’s rent overcharge claims and a landlord’s defenses, the calculation of damages, if any, and the methodology for setting the legal regulated rent (“LRR”).

The Court of Appeals, in the *Matter of Regina Metro. Co., LLC v DHCR et. al*, __NY3d__, 2020 N.Y. Slip Op. 02127, 2020 WL 1557900 [2020], effectively reversed prior appellate law holding those provisions of *HSTPA* relating to overcharge calculation cannot be applied retroactively prior to their enactment. *Regina* conclusively stated that under pre-*HSTPA* law, the four-year lookback rule and standard method of calculating LRR govern certain proceedings absent fraud. This “lookback” period is applicable in instances where a tenant’s overcharge claim accrued prior to enactment of *HSTPA*. Based upon *Regina*, the Appellate Division, First Department in *Dugan v London Terrace Gardens, LP*, __AD3d __, 2020 N.Y. Slip Op. 04239, 2020 WL 4212776 [July

23, 2020], recalled and vacated its prior decision and order, and “remanded the proceeding to the trial court to set forth a methodology for calculating rents and any overcharges. . . .” See also, *Vendaval Rlty. v Felder*, 67 Misc3d 145 [App Term, First Dept 2020].

Regina also reaffirmed longstanding case law that courts may look beyond the four-year period in limited instances, permitting tenants to use evidence which predates the limitation period to prove that the owner engaged in a fraudulent scheme to deregulate an apartment. Specifically, the Court of Appeals held:

The rule that emerges from our precedent is that, under the prior law, review of rental history outside the four-year lookback period was permitted only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate and, even then, solely to ascertain whether fraud occurred - not to furnish evidence for calculation of the base date rent or permit recovery for years of overcharges barred by the statute of limitations (*Grimm*, 15NY3d at 367). In fraud cases, this Court sanctioned use of the default formula to set the base date rent.

Citing *Thornton v Baron*, 5 NY3d 175 [2006], the Court of Appeals explained a “default formula” must be utilized in calculating the rent where fraud which predates the limitation period was found, due to the preclusive effect of the four-year rule:

In *Thornton*, the owner engaged in an egregious, fraudulent scheme to deregulate the apartment. For overcharge calculation purposes, the Court acknowledged the preclusive effect of the four-year lookback rule, deeming the LRR charged before that period to be “of no relevance” (*Id.* at 180). We held that the LRR should be based on a “default formula,” otherwise reserved for cases where there are no reliable rent records, setting the base date rent as “the lowest rent charged for a rent-stabilized apartment with the same number of rooms in the same building on the relevant base date.”

See also, *Vendaval Rlty. v Felder*, *supra*, where the Appellate Term, First Department held “[a]pplying pre-*HSTPA* law to this case, we agree with this court that the summary judgment record

conclusively establishes that landlord engaged in a fraudulent scheme to remove the subject apartment from rent stabilization,” however the court “erred in considering the rental history outside the four-year lookback period for purposes of calculating the base date rent.”

In this case, rent for the premises jumped in 2006 from \$508.89 to \$3,000.00, an approximate 600% increase. The petitioner allegedly spent \$67,240.00 on improvements to a 500 square feet apartment. This expenditure was barely sufficient to support an increase which removed the premises from regulation. The premises are located in the East Village neighborhood of New York City. The amount of the expenditure which resulted in removal of the premises from regulation, the extent of the rent increase and the location and size of the premises were sufficient indicia of fraud to justify a review of the evidence allegedly supporting the rent increase.

As detailed in the court’s March 9, 2020 analyses, petitioner failed to provide documentation to support purported \$67,240.00 in Individual Apartment Increases (“IAIs”). It also failed to proffer reasons why documentation was not available. Those records produced included affidavits from contractors which were created approximately a decade after work was done in the premises. No evidence was provided to substantiate the costs alleged. The affidavits are silent as to how those executing same recalled the specifics of the renovation. A careful analysis revealed that only \$37,040.00 of the \$67,240.00 improvements alleged supported a rent increase. Petitioner’s inflation of costs so as to avoid rent regulation is the very definition of a “fraudulent scheme.”

As set forth by the Court of Appeals in *Regina*, application of *HSTPA* to claims which accrued years before its enactment would, in many cases, create an unreasonable financial burden on landlords. The court was, however, painstaking in its effort to not issue a blanket ruling which rewarded malfeasance on the part of a landlord. As part of the holding in *Regina*, the Court of

Appeals retained the exception carved out through years of pre-*HSTPA* litigation relating to fraudulent de-regulatory schemes.

The court finds petitioner alleged improper and unsupported IAIs in a calculated effort to fraudulently remove the premises from rent regulation. Thus, a review of records beyond the four-year statute of limitations is warranted. In order to set the rent, the court is constrained to utilize the default formula outlined in *Regina* and *Dugan, supra*. This rent will form the basis for any finding of overcharge and treble damages.

CONCLUSION

Based upon the foregoing, petitioner’s motion and respondent’s cross-motion to modify the court’s March 9, 2020 decision and order are granted to the following extent:

The court modifies its order and decision of March 9, 2020 to reflect that petitioner fraudulently inflated the cost and propriety of IAIs in order to deregulate the premises. That portion of the order and decision which calculates the LRR for the premises as well as the period for calculation of damages is stricken and modified to reflect that the “default formula” will be utilized by the court to determine the LRR for the premises. Further, respondent shall be entitled to damages which resulted from the difference between the LRR determined by utilizing the “default formula” and the amount paid, less any arrears calculated at the LRR for the four-year period predating imposition of the overcharge claim. Treble damages, if any, shall be determined by the court utilizing these figures.

The matter is set down for a conference via SKYPE on September 9, 2020 at 3:00 p.m. to select a date for a hearing to determine the LRR for the premises utilizing the “default formula.”

The parties' claims relating to attorneys' fees are held in abeyance without prejudice pending a final determination in this matter.

This constitutes the order and decision of this court.

Dated: New York, New York
August 17, 2020



TIMMIE ERIN ELSNER, J.H.C.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

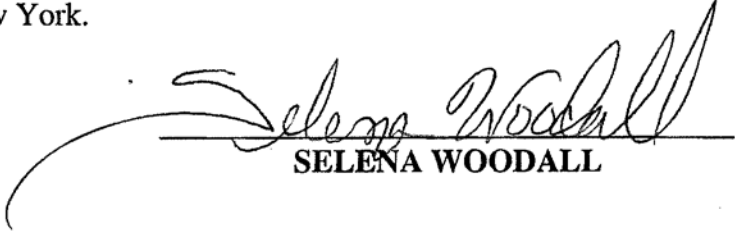
SELENA WOODALL, being duly sworn, hereby deposes and says:

1. Deponent is not a party to the action, is over 18 years of age and is employed by *Sperber Denenberg & Kahan, P.C., 48 West 37th Street, 16th Floor, New York, New York 10018.*

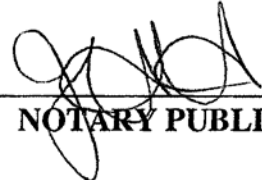
2. On *August 18, 2020*, Deponent served a true copy of the *Notice of Appeal*, upon the party(ies) whose name(s) and address(es) is(are) listed below as follows:

THE PRICE LAW FIRM LLC
Attn: Joshua C. Price, Esq.
Attorneys for Respondents-Tenants-Respondents
1115 Broadway, Suite 1053
New York, New York 10010

via **email** and **Regular First Class Mail** by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York.


SELENA WOODALL

Sworn to before me this
18th day of August 2020.



NOTARY PUBLIC

JACQUELINE HANDEL-HARBOUR
NOTARY PUBLIC, State of New York
No. 02-HA5033367
Qualified in Queens County
Commission Expires September 19, 2022