

<b>6914 Ridge Blvd LLC. v Delao</b>
2020 NY Slip Op 35110(U)
January 6, 2020
Civil Court of the City of New York, Kings County
Docket Number: Index No. L & T 86571/18
Judge: Jeannine Baer Kuzniewski
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART O  
6914 RIDGE BLVD LLC.,

Petitioner-Landlord,

Index No. L & T 86571/18

-against-

ELINORA DELAO,  
JOHN DOE AND JANE DOE,  
Respondent-Tenant.  
Jeannine Baer Kuzniewski, J.H.C.

The petitioner commenced this licensee holdover proceeding seeking possession of the rent controlled apartment at 6914 Ridge Boulevard, #D2, Brooklyn. The tenant of record, Marguerite Valentin, passed away on August 12, 2018. The respondent, Elinora Delao, asserts as a defense, that she is entitled to succession as a nontraditional family member.

After a digitally-recorded trial held and after due deliberation and consideration of the credible documentary and testimonial evidence adduced at the trial, the Court makes the findings of fact and conclusions of law set forth below.

The attorneys for both sides submitted a Joint Stipulation of Facts. The petitioner submitted their certified Deed, the certified MDR, and the certified DHCR Rent Registration Roll and then rested.

The respondent testified that she met the tenant of record in 2012 through the church they both attended. In 2014 she was hired as one of three home care attendants by Ms. Valentin's then, Power of Attorney. She testified that during this time period they started to develop a deep friendship.

After a period of time the Power of Attorney notified her that the tenant of record was out of funds to pay the caretakers so she would have to be placed in a nursing home. Ms. Delao testified that she chose to stay with Ms. Valentin, without compensation, because she felt sorry for her and cared for her greatly.

Ms Delao testified that she gave up her own apartment to move in with the tenant of record sometime in 2015. She stated that the two women joined their finances and eventually opened a joint bank account in 2016. In support she offered into evidence a bank account statement for the period March 1 through March 31, 2019.

Ms. Delao continued her testimony stating that the Power of Attorney had squandered Ms. Valentin's funds and that she brought her to an attorney who was able to retrieve a portion of the money. On May 1, 2015 Ms. Valentin executed a Durable Special Power Of Attorney For Health Care which appointed respondent as her agent. On January 24, 2017 Ms. Valentin executed a Power Of Attorney appointing Ms. Delao as her agent. Additionally, she testified that she was the executor of the tenant of record's will.

Ms. Delao offered lengthy testimony regarding the relationship that Ms. Valentin and she shared. She stated that they were more than employer/employee, that they were more like sisters. She offered testimony regarding how they shared social events, holidays, and life's daily routine. She testified that she took care of all of Ms. Valentin's personal and physical needs after she broke her hip and later, as she was dying. She described a routine of doctor's appointments, manicures and hair appointments. She also recounted visits to the park and family functions. Ms. Valentin did not have family in the United States so she was brought into Ms. Delao's family. In support of this testimony she submitted multiple photographs of Ms. Valentin at various venues. Her testimony included how she shared whatever money she herself had in order to allow Ms. Valentin to enjoy simple pleasures like manicures.

In support of Ms. Delao's claim she called three witnesses. Lewis Turcotte was the first to testify. He testified that he is an engineer and he is the volunteer minister at the house of worship that both the respondent and the tenant of record attended. He stated that he had known Ms. Valentin from her attendance at Sunday meetings for 20 to 25 years and over this time had developed a trusting relationship with her. The witness stated that he spoke French, Ms. Valentin's first language, so she was drawn to conversations with him.

Mr. Turcotte testified that he witnessed Ms. Valentin and Ms. Delao attending services, church sponsored events and social functions together. He claims that his impression of the two women was that they conducted them as family members akin to a mother-daughter. He further testified to assisting Ms. Delao in taking care of Ms. Valentin's end-of-life details.

The next witness was Susan Hovden. She is a retired registered nurse who knew Ms. Valentin since the late 1970's. They were both members of the same congregation and she met Ms. Delao through the church about eight years ago. She testified that she would go to lunch with the women, she saw them at church and that they attended a church picnic together. She claims that she witnessed a warm, caring and loving relationship.

She testified that Ms. Valentin had told her that she felt Ms. Delao had taken her into her family and that she was happy since she had a friend to take care of her in a

loving and endearing way. She also testified that Ms. Valentin told her she loved the respondent's dog. Ms. Hovden testified that Ms. Delao was more self-sacrificing than most home care attendants.

The final witness for the respondent was Remy Valentin, the nephew and Godson of Ms. Valentin. It is noted that Mr. Valentin lives in France so the testimony was taken via skype. Mr. Valentin testified regarding how his aunt moved to the United States and how his relationship with her had become close, especially after his sister, who had lived in the United States, passed away.

He testified that he and Ms. Valentin spoke every six weeks for the three years prior to her death. He testified that Ms. Delao often answered the phone when he called his aunt, but that his conversations with Ms. Valentin were private since they spoke in French.

He testified credibly that Ms. Valentin told him that she loved Ms. Delao and considered her to be like a sister or a daughter. He further stated that Ms. Valentin had named Ms. Delao the executor of her will, although there really were no assets in her estate. He was also aware of holidays that they had spent together and testified about a vacation that the two women took to North Carolina.

The respondent rested. The petitioner called no witnesses in rebuttal.

The Court Of Appeals addressed non-traditional family members in *Braschi v. Stahl Assocs. Co.*<sup>1</sup> The Court addressed the legislative intent in determining who should be protected under the rent control laws. The Court reasoned

“it is reasonable to conclude that, in using the term ‘family’, the Legislature intended to extend protection to those who reside in households having all of the normal familial characteristics. ...

This definition of ‘family’ is consistent with both of the competing purposes of the rent-control laws: the protection of individuals from sudden dislocation and the gradual transition to a free market system. Family members, whether or not related by blood, or law who have always treated the apartment as their family home will be protected against the hardship of eviction following the death of the named tenant, thereby furthering the Legislature's goals of preventing dislocation and preserving family units which might otherwise

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<sup>1</sup> 74 N.Y.2d 201, 213, 543 N.E.2d 49 (1989)

be broken apart upon eviction.”<sup>2</sup>

The law requires that “[t]he family member should have contemporaneously resided with the rent-regulated tenant as a primary resident for two years immediately prior to the tenant's death or permanent vacatur of the unit.”<sup>3</sup>

“The determination as to whether an individual is entitled to noneviction protection should be based upon an objective examination of the relationship of the parties. In making this assessment, the lower courts of this State have looked to a number of factors, including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services ...These factors are most helpful, although it should be emphasized that the presence or absence of one or more of them is not dispositive since it is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control.”<sup>4</sup>

The NYS Legislature codified the definition as follows:

“any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between such

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<sup>2</sup>*Id.*

<sup>3</sup>Succession rights to rent-regulated tenancies by "family members"—Residency-term requirements for succession, F N.Y. Prac, Landlord and Tenant Practice in New York § 11:415.

<sup>4</sup>*Braschi v. Stahl Assocs. Co.*, 74 N.Y.2d 201, 213, 543 N.E.2d 49 (1989)

persons be required or considered.

- (a) longevity of the relationship;
- (b) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;
- (c) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;
- (d) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;
- (e) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, conferring upon each other a power of attorney and/or authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;
- (f) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;
- (g) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;
- (h) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship; ...”<sup>5</sup>

The un-rebutted testimony and evidence supports a finding that the respondent’s relationship with the deceased falls within the definition of a non-traditional family member and that they co-resided in the Apartment for the requisite time period that would

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<sup>5</sup>N.Y. Comp. Codes R. & Regs. tit. 9, § 2204.6

entitle Ms. Delao to succeed to the rights of the tenant of record. She produced proof of a joint bank account, documents formalizing legal obligations, years of sharing family functions and holding themselves out to members of the community and church as having an emotionally committed relationship. The Court notes that the photographs depict Ms. Valentin as engaged with Ms. Delao's family members independent of Ms. Delao. It is undisputed that Ms. Delao cared for Ms. Valentin in the apartment until she passed away. Finally, she provided credible supporting testimony from clergy, a friend and the closest relative of Ms. Valentin.

Pursuant to the foregoing the Petition is dismissed with prejudice. The petitioner is to recognize Ms. Elinora Delao with all the rights, obligations and rent regulatory status afforded the deceased tenant of record, Marguerite Valentin.

This constitutes the decision of the Court.

Dated: January 6, 2020

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Jeannine Baer Kuzniewski, J.H.C.  
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