

**Chester v Cleo Realty Assoc., L.P.**

2022 NY Slip Op 32108(U)

July 6, 2022

Supreme Court, New York County

Docket Number: Index No. 151972/2017

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. FRANK NERVO PART 04**

*Justice*

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AILEEN CHESTER, EVELYN DELUCA, JULIE HARDING,  
WILLIAM HARDING, KATIE LACHTER, PHYLLIS  
LARICCIA, SUZANNE NORTHRUP, CILDA SHAUR

Plaintiff,

- v -

CLEO REALTY ASSOCIATES, L.P.,

Defendant.

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**INDEX NO.** 151972/2017

**MOTION DATE** 03/11/2022

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Plaintiffs move for summary judgment finding defendant fraudulently removed the subject apartments from rent stabilization while receiving J-51 tax benefits and overcharged plaintiffs by charging them market-rate rent in excess of the stabilized rent. Consequently, plaintiffs seek to apply the default formula to establish the legal rent for the subject apartments, and for treble damages. Defendant opposes and cross-moves for summary judgment dismissing the action.

The standard by which summary judgment motions are reviewed is well established. On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]).

Here, there can be no legitimate argument against affording plaintiffs the protections of rent stabilization. Indeed, it is well established that tenants residing in buildings receiving J-51 tax benefits are entitled to rent-stabilized leases (*Roberts v. Tishman Speyer Props., L.P.*, 13 NY3d [2009]; *Rossmann v. Windermere*, 187 AD3d 527 [1st Dept 2020]). Thus, the heart of this dispute is whether defendant engaged in a fraudulent scheme to deregulate the subject apartments, requiring the application of the default formula for calculating base rent and treble damages for overcharges from that base rent.

As relevant to this action, defendant's property manager simultaneously managed a building at 210 West 101<sup>st</sup> Street, which was subject to an earlier rent-

overcharge action by tenants. Likewise, the property manager was responsible for a building at 360 Central Park West, also subject to a prior rent-overcharge action by tenants. Apartments in these two buildings were, by Court Order, determined to be improperly removed from rent stabilization prior to the instant lawsuit. Consequently, there can be no doubt that defendant was aware it was improperly overcharging plaintiffs in the instant building as plaintiffs, like the tenants in 210 West 101<sup>st</sup> Street and 360 Central Park West, resided in a building receiving J-51 tax benefits and, like tenants in those two buildings, had not been afforded rent stabilized leases by defendant's same property manager (see *Gudz v. Jemrock Realty Co. LLC*, 2011 NY Slip Op 31647[U] [Rakower, J. 2011]; *Cenpark Realty LLC v. Franco*, NY Index No. 152928 Doc. No. 36 [Coin, J., 2015]). Furthermore, defendant responded to DHCR's J-51 Rent Registration Initiative acknowledging the subject building received J-51 tax benefits and further acknowledging apartments should have received rent-stabilized leases during that period. Finally, following the filing of this action, defendant continued to issue market rate leases for the subject apartments with riders stating the apartments were not rent-stabilized, notwithstanding: (1) the prior court orders finding improper deregulation under similar circumstances in buildings with the same property manager, (2) the proceedings before DHCR where defendant acknowledged that receipt of J-51 benefits required rent-

stabilized leases, and (3) the instant lawsuit alleging defendant continued to fail to provide the requisite rent-stabilized leases and otherwise correct overcharges. Consequently, defendant's failure to properly correct known overcharges, under these circumstances, amounts to a willful and fraudulent scheme to deregulate the subject apartments. Stated differently, defendant has not established the overcharges not willful.

Having found that defendant engaged in a fraudulent scheme to deregulate the subject apartments, the default formula under 9 NYCRR § 2522.6(b) is properly used to determine appropriate calculation of the base rent (*see Thornton v. Baron*, 5 NY3d 175, 180 [2005]; *Matter of Grimm v. New York State Division of Housing and Community Renewal*, 15 NY3d 358 [2010]; *Regina Metropolitan Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 NY3d 322 [2020]).<sup>1</sup> Consequently, in applying the default formula here, the base date rents of the subject apartments are:

Deluca	(Apt 5A)	\$1,088.92
Harding	(Apt PHB)	\$1,088.92

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<sup>1</sup> There is no dispute that the applicable four-year lookback base date for calculating rent overcharges is February 28, 2013 – four years prior to the submission of the summons and complaint.

Lachter	(Apt 7C)	\$885.82
Shaur	(Apt 12C)	\$885.82
Chester/Northrop	(Apt 9E)	\$1,017.79
Lariccia	(Apt 17E)	\$1,017.79

The above base date rents remain frozen until defendant files corrected registration statements with DHCR (Administrative Code of the City of New York § 26-517; *see also Altschuler v. Jobman 478/480, LLC*, 135 AD3d 439, 441 [1st Dept 2016]; *Matter of Hargrove v. Division of Hous. & Community Renewal*, 244 AD2d 241 [1st Dept 1997]).

Turning to damages, treble damages are appropriate given defendant's failure to establish, by a preponderance of the evidence, that the overcharge was not willful, as discussed supra (*id.*; *see also* Administrative Code of the City of New York § 26-516[a]). However, treble damages are properly limited to two-years prior to the commencement of the claim, under the law in effect at the time this action was filed (*see generally Conason v. Megan Holding, LLC*, 25 NY3d 1 [2015]; *Regina Metropolitan Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 NY3d at 386). Accordingly, the Court finds the overcharges plus treble damages and interest, as calculated by plaintiffs' counsel (NYSCEF Doc. No. 66 and spreadsheets at Doc. No. 105), correct and

incorporates by reference those calculations. Accordingly, overcharge damages for the subject apartments are:

Deluca	(Apt 5A)	\$1,031,699.20
Harding	(Apt PHB)	\$789,139.42
Lachter	(Apt 7C)	\$321,921.26
Shaur	(Apt 12C)	\$628,217.80
Chester/Northrop	(Apt 9E)	\$587,130.09
Lariccia	(Apt 17E)	\$645,891.16

To the extent that plaintiffs' seek reasonable attorney's fees, pursuant to Administrative Code § 25-516(a)(4) and Rent Stabilization Code §2526.1(d), the Court finds an award of same proper (*see also* Real Property Law § 234 and subject apartment leases at ¶ 23[D][3] providing for attorney's fees). However, it is beyond cavil that such legal fees must be reasonable. Consequently, the amount of same will be determined at inquest.

Accordingly, it is

ORDERED that the plaintiffs' motion is granted in its entirety; and it is further

ORDERED that defendant's motion is denied; and it is further

ORDERED that an inquest to determine the total amount of legal fees due plaintiffs shall be held, via Microsoft Teams, on September 13, 2022 at 3:00pm; and it is further

ORDERED that by August 26, 2022, plaintiffs' counsel shall file, via NYSCEF, a detailed recitation of the work performed and fees incurred in this matter; failure to timely file same shall constitute abandonment of plaintiffs' claim for legal fees; and it is further

ORDERED that by September 9, 2022, defendant shall file, via NYSCEF, papers in opposition to the fees requested by plaintiffs, and such opposition shall specifically identify those entries which defendant believes excessive or otherwise improper; should defendant fail to timely submit opposition papers, defendant shall be precluded from raising objections or challenges to plaintiffs' legal fees at time of inquest; and it is further

[continued on following page]

ORDERED that should defendant consent to the amount of legal fees sought by plaintiffs, defendant shall file, via NYSCEF with courtesy copy to chambers, a stipulation so stating no later than September 9, 2022.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/6/2022  
DATE

  
HON. FRANK P. NERVO  
J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE