

Helms Realty Corp. v City of New York
2022 NY Slip Op 32744(U)
August 15, 2022
Supreme Court, New York County
Docket Number: Index No. 159375/2013
Judge: James d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JAMES D'AUGUSTE PART 55

Justice

-----X

HELMS REALTY CORPORATION,

Plaintiff,

INDEX NO. 159375/2013

MOTION DATE _____

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION/DEPARTMENT
OF SOCIAL SERVICES,

**DECISION + ORDER ON
MOTION**

Defendants.

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HELMS REALTY CORPORATION,

Plaintiff,

Index No. 157295/2019
(Action No. 2)

-against-

THE CITY OF NEW YORK, THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION/DEPARTMENT
OF SOCIAL SERVICES,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 44

were read on this motion to/for JUDGMENT - SUMMARY.

In this consolidated decision and order, the Court is resolving two summary judgment motions filed in Index: 159375/2013 (Action 1) under Motion Sequence Number 001 and Index: 157295/2019 (Action 2) under Motion Sequence No. 002. In Action No. 1, plaintiff Helms Realty Corporation (“Helms”) moves for summary judgment, seeking a judgment of \$59,280.00 plus statutory interest as payment for Eric Abrams’ temporary housing from February 1, 2011 until July 31, 2013. In Action 2, plaintiff seeks a judgment of \$138,450.00 plus statutory interest as payment for Eric Abrams’ temporary housing from August 1, 2013 through May 31, 2019.

In 2001, plaintiff and defendants entered a written memorandum of understanding (“MOU”) for plaintiff to provide emergency housing to eligible individuals at plaintiff’s property located at 230 West 101st Street (Index: 159375/2013, NYSCEF Doc. No. 8, MOU Art. 2 §B). Per the MOU, the defendants agreed to pay the plaintiff a nightly rate of \$65.00 for as long as the eligible person remains in the plaintiff’s property (*Id.*). Thereafter, in 2003, the defendant City of New York Human Resources Administration (“HRA”) referred Eric Abrams to the plaintiff’s property. Plaintiff alleges that after 2009 defendants stopped paying for Abrams, in breach of the MOU, even though Abrams continued to reside at plaintiff’s property. In the 2013 action, plaintiff moved for summary judgment in the amount of \$59,280.00 for unpaid housing payments for Abrams from February 1, 2011 to July 2013. In the 2019 action, plaintiff seeks a judgment of \$138,450.00 plus statutory interest as payment for Eric Abrams’ temporary housing from August 1, 2013 through May 31, 2019. Notably, in *Helms Realty Corp. v. City of New York*, 2011 WL 13377563 (Sup. Ct., N.Y. County, Aug. 23, 2011) (Kern, J), plaintiff was previously awarded summary judgment against defendants requiring them to pay for the period of Abrams’ residence covering January 2010 through January 2011. (Index: 159375/2013, NYSCEF Doc. No. 10).

Defendants contest summary judgment on three interrelated bases. First, defendants argue that plaintiff cannot demonstrate conclusively that Abrams resided at the building between February 1, 2011 and May 31, 2019, stating that their records show plaintiff moved out of state and pointing to Abrams failure to sign in daily. Second, defendants argue that plaintiff’s failure to submit signature logs violates the MOU, and, accordingly, plaintiff is in breach of the agreement and owed nothing. Third, defendants argue that plaintiff failed to use daily logs –

instead using weekly logs – as required under the MOU, and therefore, the plaintiff is also in breach of the MOU and owed nothing.

Despite defendants' assertions to the contrary, plaintiff has unequivocally demonstrated that Abrams resided at the building from February 1, 2011 until May 31, 2019. Plaintiff provided multiple affidavits of employees with personal knowledge that plaintiff had resided at the subject building the whole time. In fact, on May 26, 2011, Abrams admitted to being a "lawful rent stabilized tenant [in the subject building] since 2003" in an answer on a related holdover proceeding. (Index: 159375/2013, NYSCEF Doc. No. 15). In opposition, defendants have merely produced the screenshot of an internal database entry and a March 7, 2011, self-generated "Cancellation/Room Closure Verification" notice. The notice expressly states that the "Emergency placement unit . . . has been notified that the client named above is no longer residing at your facility." (Index: 159375/2013, NYSCEF Doc. No. 27). This hearsay statement, the origin of which defendants have never identified, is woefully insufficient to raise an issue of fact as to Abrams' continued residence in the apartment provided to Abrams as requested by defendants. Moreover, plaintiff's failure to produce daily signature logs does not bolster defendants' contention that plaintiff did not reside in the building during the time period in question.¹ The Court notes that defendants' obligation to pay plaintiff for Abrams' tenancy only ceases when Abrams vacates the premises, and the evidence shows that plaintiff remained a tenant throughout this entire period.

¹ Defendants argue that the absence of Abrams' signature on the tenancy logs essentially proves a negative – that the absence of Abrams' signature shows that he must not have been residing at the building during this time. The Court finds this argument to be unavailing as plaintiff shows that Abrams had refused to sign the signature logs well prior to his alleged departure. Plaintiff continued to submit the weekly logs, just without Abrams' signature. Therefore, the absence of Abrams signature is not sufficient to show that he was not residing in the subject premises.

Defendants assert that plaintiff used a weekly logbook when defendants required the use of a daily logbook. This argument lacks merit for several reasons. As an initial matter, defendants never notified plaintiff that the type of logbook it was using constituted a breach of the MOU. Rather, defendants stopped paying for Abrams' tenancy because HRA incorrectly concluded that Abram was no longer residing in the subject premises. While defendants were entitled to "assume that the client has left the facility" based upon a failure to produce a logbook without proper explanation, plaintiff notified defendants that Abrams was refusing to sign its logbook. Defendants continued to pay for Abrams' residency for a two-year period in which he refused to sign the logbook before entering into its database an incorrect factual conclusion that Abrams had departed New York State.

Next, the type of logbook used by plaintiff is irrelevant as it relates to this litigation. Plaintiff is seeking payment for a period in which Abrams refused to sign a logbook. Defendants have not produced information that Abrams would comply with a more stringent requirement of signing a logbook every single day when he had already been refusing to sign a logbook on a weekly basis. Under the MOU, defendants are obligated to continue to pay for the accommodation plaintiff was providing to Abrams while he remained in the facility. Unlike *11th St Assocs. LLC v. The City of New York*, 2019 WL 132525, 2019 N.Y. Slip Op. 30064(U) (Sup. Ct., N.Y. County Jan. 8, 2019) (Tisch, J), where defendants produced actual evidence showing the placed individual may have resided in a specific alternative location, the defendants in this action have not produced any evidence disputing Abrams' continued residency in the subject premises.

Finally, there is no significant difference between facts of this litigation and the litigation in which plaintiff prevailed against defendants under Index No. 106160/2009 other than the dates

of service. *See Ryan v New York Tel. Co.*, 62 NY2d 494, 500-01 (1984). The Court notes that Justice Kern’s decision precludes defendants from raising any legal arguments against liability. As the instant lawsuits cover a different time period than the earlier litigation, the only potentially valid defense that could have been raised by defendants is if Abrams did not reside in the subject premises during the periods covered by the litigations. As noted above, defendants failed to submit any evidence supporting a non-speculative alternative conclusion that Abrams did not reside in the subject premises.

Accordingly, it is

ORDERED that plaintiff’s motion for summary judgment in Index: 159375/2013 (Motion Sequence 001), is granted, and the clerk is directed to enter judgment in the amount of \$59,280.00 plus pre-judgment interest as of May 1, 2012,² and it is further,

ORDERED that plaintiff’s motion for summary judgment in Index: 157295/2019 (Motion Sequence 002) is granted, and the clerk is directed to enter judgment in the amount of \$138,450.00 plus pre-judgment interest as of June 30, 2016.

This constitutes the decision and order of the Court.



<u>8/15/2022</u>				<u>JAMES D'AUGUSTE, J.S.C.</u>
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE

² Since the City’s breach occurred over a period of time, the Court calculated a mid-point date for calculating pre-judgment interest.