

Hess v EDR Assets LLC
2022 NY Slip Op 33380(U)
October 6, 2022
Supreme Court, New York County
Docket Number: Index No. 160494/2017
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

Justice

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MICHELE E HESS, JILL GOLDRING, MATTHEW HEAP,
RUXANDRA HEAP, CRAIG GIBSON, ANNA MILLER

Plaintiff,

INDEX NO. 160494/2017

MOTION DATE 01/03/2022

MOTION SEQ. NO. 006

- v -

EDR ASSETS LLC, PARKOFF OPERATING CORP., GLYN
PARSLEY, SONDR A STAMEN, JOHN AND JANE DOE,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 296, 298, 299

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

Copious litigation has surrounded the J-51 tax program’s intersection with luxury decontrol provisions of the Rent Stabilization Law (RSL), resulting in significant changes in the interpretation of same and the retroactive reregistration of apartments – a recitation of same is not required here (see *Gersten v 56 7th Ave. LLC*, 88 AD3d 189 [1st Dept 2011]; *Roberts v. Tishman Speyer Properties, L.P.*, 13 NY3d 270 [2009]; *Regina Metropolitan Co., LLC v. New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 [2020]).

A brief discussion of rent registration is, however, warranted. As relevant here, a landlord must register the rent tenants are charged for rent-

stabilized apartments with the Department of Housing and Community Renewal (DCHR). Where, following reregistration of previously improperly deregulated apartments, a landlord's retroactive rent registration reflects rents significantly higher than that actually charged (i.e. registration of a preferential rent), the Appellate Division, First Department has found same establishes a colorable claim of fraud and that the default formula set forth in RSC § 2522.6(b) should be utilized (*Casey v. Whitehouse Estates, Inc.*, 197 AD3d 401, 405 [1st Dept 2021]).

Here, there is no dispute that the landlord expended approximately \$13,000 for modest improvements to the building, comprising improvements to mailboxes and water storage, and that landlord received approximately \$3,100 in J-51 tax benefits for these modest improvements. Furthermore, the Appellate Division, First Department rejected landlord's claim that as a matter of law it did not engage in a fraudulent scheme:

...we reject defendants' argument on the merits. Plaintiffs assert that defendants, while enjoying J-51 tax benefits, failed to re-register the units until years after Roberts was decided and applied retroactively, waited over a year to re-register units after being notified by DHCR that they had to do so, took steps to comply only after their scheme was uncovered, and continued to inform tenants that the units were not subject to regulation even after DHCR notified them

otherwise. Contrary to defendants' contention, plaintiffs have alleged more than a mere delay in re-registering units, and their allegations, if proven, may support application of the default formula. (*Hess v. EDR Assets LLC*, 200 AD3d 491 [1st Dept 2021] [internal citations omitted]).

Plaintiffs have established the aforementioned claims which the Appellate Division, First Department previously determined may support a finding of fraud sufficient to apply the default formula, namely that: defendants engaged in significant years-long delays in registering the subject apartments, ignored agency directives requiring the registration of the instant apartments, continued to falsely and unknowingly inform tenants that their units were not subject to rent regulation, and registered the apartments only after their scheme was discovered. While defendants attempt to explain these actions, they have not refuted same. To the extent that defendants contend they disagreed with the DHCR's position/directives or court decisions, and thus were free to ignore same, it is beyond cavil that defendants may not unilaterally determine which directives or court orders they will choose to respect.

Accordingly, it is

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

ORDERED that the default formula, under RSC § 2522.6(b), for calculating the legal regulated rent of the subject apartments shall apply; and it is further

ORDERED that the calculation of base rent under RSC § 2522.6(b), as well as the fees, costs, and disbursements, including the calculation of attorney's fees, due plaintiffs is referred to the Special Referee's Part for a Referee or Judicial Hearing Officer to hear and report on same

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) calculation of base rent under RSC § 2522.6(b) and calculation of any overcharge and damages due plaintiffs
- (2) fees, costs, and disbursements, including the calculation of attorney's fees, due plaintiffs

; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the “References” link on the court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further


ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified

in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and
 it is further

ORDERED that, unless otherwise directed by this court in any Order that
 may be issued together with this Order of Reference to Hear and Report, the
 issues presented in any motion identified in the first paragraph hereof shall be
 held in abeyance pending submission of the Report of the JHO/Special Referee
 and the determination of this court thereon.

THIS CONSTITUTES THE DECISION AND ORDER OF REFERENCE OF THE COURT.

10/6/2022
 DATE


 HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION **J.S.C.**
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE