

**Tiliaeva v 1614 Midwood Holdings LLC**

2022 NY Slip Op 34544(U)

September 30, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 1177/20

Judge: Julie Poley

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART O

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MALIKA TILIAEVA,

Index Number HP # 1177/20

Tenant-Petitioner,

*-against-*

**DECISION AFTER HEARING**

1614 MIDWOOD HOLDINGS LLC  
GEORGE MEDIMEN  
HELENE KUCZYNSKI  
ROMAN KUCZYNSKI  
ADAM KUCZYNSKI

Owner-Respondents,

and DHPD

City-Respondent.  
-----X

Present:

**JULIE POLEY**  
**Judge, Housing Court**

Malika Tiliaeva (“Petitioner” or “Tiliaeva”) commenced this proceeding by an order to show cause, dated August 20, 2020, against Respondents (“Respondents”) for an order to correct housing violations and for relief pursuant to N.Y.C. Admin. Code 27-2005(d) and 27-2004(a)(48) alleging harassment relating to Petitioner’s tenancy at 1614 East 12<sup>th</sup> Street, Apt. C3, Brooklyn, New York 11229 (“subject premises” or “apartment”). All parties appeared by counsel, and on October 21, 2020, entered into a Consent Order where in paragraph 2 Respondents agreed to refrain from any conduct in violation of N.Y.C. Admin. Code 27-2005(d) and 27-2004(a)(48) and agreed to perform repairs addressed in the Consent Order. (“Consent Order”).

On November 22, 2021, Petitioner moved by an order to show cause seeking contempt and breach of the Consent Order. On January 11, 2022, Petitioner's motion was granted on consent to the extent of setting the matter down for a hearing as to harassment allegations only.

On May 23, 2022, this court held an in person hearing and makes the following findings of fact and conclusions of law.

Malika Tiliaeva testified on her own behalf. Tiliaeva credibly testified that she has resided in the subject apartment since 2005. At inception of the tenancy she and her brother lived at the premises, but now she occupies her apartment with her 7 year old daughter. She had a good relationship with the landlord Adam Kuczynski ("landlord or Kuczynski") up until onset of the COVID-19 Pandemic, but in April 2020 she was not able to make her rental payment and asked her landlord if he would allow her to pay half of her monthly rent. Her landlord refused and told her that she has to pay or surrender possession in two weeks. At that time the apartment was cold, and she also called 311 to report lack of heat. It was right after she called 311 when her landlord started to threaten her. In the presence of her daughter, he told her he will break her legs and her daughter's legs and that he will call the "mob" and they will never find her. Hearing the threats made her daughter extremely frightened and she started crying and holding on to her leg. Since that incident her daughter is afraid to hear Kuczynski's name. Right after the incident the landlord also contacted Petitioner's brother by telephone and text messages telling her brother that she has to move out and to force her to sign a termination letter.

Petitioner further credibly testified that in October of 2020 she settled this proceeding with the landlord via Consent Order, and he agreed to correct various conditions in her apartment and agreed not to engage in harassing behavior. Pursuant to the agreement the landlord send workers to perform repairs. The workers who worked in her apartment told her that they were

ordered by the landlord to do the minimum to pass inspection and that he does not care about what happens after. They also told her that she is very nice, and not like what the landlord told them about her. Tiliaeva testified that despite the work, most repairs remain unabated. Sometime this year after court conference she agreed to allow the landlord to finish the repairs, but he sent an unlicensed worker, and she did not let him in.

Petitioner further credibly testified that since Consent Order, she ran into Kuczynski approximately five times. In January of 2021, she was with her daughter and encountered Kuczynski outside of the building. At that time, he said “you bitch, you still can’t come down I will show you a different way.” She felt terrible that he was not abiding by the agreement. In February of 2021, inside the building, she saw Kuczynski talking to his friend and when he saw her, he pointed to her and told his friend “I was talking about this bitch to you.” Additionally, in February of 2021 both her and her daughter’s bicycles disappeared from the hallway. Although her daughter’s bicycle was later returned damaged, her own bicycle was never recovered. On another occasion, in March of 2021, Tiliaeva was with her daughter trying to get to her apartment and Kuczynski was in her way and very jumpy and yelled at her “you scared of me, you can’t even go to your apartment.” In April of 2021, she heard Kuczynski and his mother talking to her daughter in the hallway asking her name and age and when they saw Tiliaeva they stopped. Thereafter, on May 10, 2021, approximately at 6:00 pm, a case worker from Administration for Children Services (“ACS”) visited Petitioner at her apartment. The ACS caseworker said that an anonymous male called with a (347) number alleging that a minor child is neglected at this address and there is drug activity at the premises. The case worker checked her daughter for bruises spoke to her and to her daughter and left. As to Petitioner’s knowledge, an investigation was conducted by contacting her daughter’s pediatrician and school as well as

various neighbors. ACS caseworker also came back to check on them a few times until the case was closed. On random occasions, police were also called to her address and every time they came, they said that they must have a wrong apartment. Tiliaeva also testified that she had never had ACS complaints prior to this one and her believe that Kuczynski made the call to ACS is because he has a (347) telephone number and in 2017 he himself told Tiliaeva he called in a complaint to ACS on another tenant in the building alleging that the tenant was selling drugs and prostituting herself.

On cross-examination, Tiliaeva testified that she does not know for a fact who called ACS. That Kuczynski does not come to her apartment or seek her out to speak to her, and that the incidents she mentioned happened only when they encounter each other in the building or in the vicinity of the building. Every time he spoke to her or made comments, she was alone or with her daughter, other than the time Kuczynski was with his friend. Petitioner testified that Kuczynski frightens her when he speaks to her as he jumps and yells and looks like he wants to strike her. When that happened in May of 2021, she did not call the police, she called her lawyers. She acknowledged that the workers came to repair the conditions, but they did not finish, and that the work is not satisfactory. Petitioner testified that all of the bikes were removed from the hallway not just hers. She acknowledged that when HPD returned some of the violations were removed.

Zokir Tiliaev testified on Petitioner's behalf. Mr. Tiliaev testified that he is Petitioner's brother and he lived in the apartment with his sister from 2009-2013. In May of 2020 Respondent Kuczynski called him and texted him few times and told him that his sister was behind in rent and that he wanted her to vacate. Kuczynski also told him that he is having too many problems with his sister and said he will waive the rent is she moves out. Tiliaev also

testified that prior to that Kuczynski contacted him in 2019 to tell him that his sister was excessively running water and his water bill was very high. On cross examination, Zokir Tiliaev testified that while he resided in the apartment both he and his sister communicated with the landlord. Since he moved Kuczynski contacted him only twice. Once in 2019 and once in 2020 to ask his sister to surrender possession. He told Kuczynski to put his offer in writing and that he will communicate the offer to his sister. That since he moved out landlord did not ask him for rent.

Natalie Goncharov testified next. Ms. Goncharov testified that she is a senior paralegal at Brooklyn Legal Services (“BLS”) and has been Petitioner’s caseworker in this litigation since May of 2020. Ms. Goncharov credibly testified that she met Petitioner when she became a client of BLS. She testified that she drafted a letter to the Respondent landlord in an effort to resolve the landlord/tenant dispute regarding the conditions of Petitioner’s apartment and the alleged harassing behavior. (Letter dated June 3, 2020, Pet. Ex. 2). She further testified that she received responses via email from Adam Kuczynski denying any harassing behavior toward Petitioner and denying severity of the conditions in the apartment. (Pet. Ex 3). She tried to mitigate between the parties out of court but was unable to do so and instant litigation ensued. She met Petitioner’s daughter and the little girl seemed frightened of what was going on in the building. Goncharov testified that she spoke to many other tenants in the building who were not aware of their rights and were also afraid to call 311 and felt they will be mistreated if they complain. She further testified that she spoke to the landlord’s attorney about access dates and the work that needed to be performed. That she was advocating for Petitioner before and after the consent order and was highlighting to the landlord’s attorneys what needed to be done. Petitioner’s apartment was not painted in 11 years, that she had roach and mice infestation, and the workers

in Petitioner's apartment told her that she had electrical issues because the fixtured were not properly wired.

On cross-examination, Goncharov testified that she has never been inside Petitioner's apartment mainly due to the pandemic. She observed the conditions of Petitioner's apartment only from photographs and videos and she spoke to HPD while they were in Petitioner's apartment. That she visited the building twice once in early 2020 and once at the end of 2021 and observed that the building was in disrepair.

Alex Darrow was the only witness to testify for Respondents. Mr. Darrow testified that he was hired by the Respondent to do handyman/repair work at the subject building. He testified that he was inside Petitioner's apartment on three separate occasions. The first time Petitioner asked him to install her air conditioner. Mr. Darrow testified that after he quoted her a price for installation, she did not hire him. He further testified that on February 10, 2022 Respondent hired him to clear a list of violations in Petitioner's apartment. On that day he went to Petitioner's apartment spoke to Tiliaeva and inspected what needed to be done. He then told her he needs certain tools, and he will come back and when he returned she already left. He then made another appointment with her for the next day and although she allowed him access, she did not allow him to start any work.

On cross-examination Darrow testified that he is not a licensed plumber or a licensed electrician in the United States. He has worked at the building since July of 2021. As part of his duties, he removes recycling twice a week. He has been a handyman for over 20 years. Petitioner complained that her light fixtures were not working properly, and the light bulbs were burning out. He inspected the light fixtures and found that the lightbulbs Petitioner was using were substandard and that the fixtures were not property screwed in and suggested to install LED

light bulbs and screw in the fixtures properly, but Petitioner refused. The bathroom ceiling needed to be painted, that the wall in her kitchen needed a chair rail, and there was a stain on the floor. He also remembered that a window needed a mosquito net. He testified that Petitioner wanted him to remove the ceiling to check for an active leak and he did not think that was necessary as the ceiling was dry. That she wanted a licensed plumber and a licensed electrician to do the work. That she called someone spoke to them asked him about his licenses stopped him from working and he left.

**Discussion:**

The Housing Maintenance Code section 27-2004(a)(48) defines “harassment” as any act or omission that causes or is intended to cause any tenant to vacate the premises or surrender or waive any right in relation to the occupancy. The Housing Maintenance Code defines the acts of harassment more specifically as *inter alia* repeated interruption or discontinuances of essential services; repeated failures to correct hazardous or immediately hazardous violations, violating city construction codes; removing the possessions of any person lawfully entitled to occupancy; threatening, intimidating or using obscene language. N.Y.C. Admin. Code § 27-2004(a)(48)(b-1)(b-2)(b-4)(e)(f-3)(1). Proof of these predicates gives rise to a presumption that an owner intended to cause a tenant to vacate or surrender rights, unless the occupancy is in a private dwelling. “Private dwellings” defined in N.Y.C. Admin. Code § 27-2004(a)(6) as structures designed and occupied for residential purpose by no more than two families and therefore not applicable herein.

Based on the credible and undisputed testimony by Petitioner, the court finds that Respondents violated paragraph 2 of the Consent Order in that Kuczynski continued to accost Petitioner on numerous occasions using vulgar language and threats. Although Petitioner was

unable to verify whether Kuczynski was the person who made an anonymous call to ACS, the court finds her unrebutted testimony credible based on prior admission by Kuczynski that he called ACS on a different tenant. Kuczynski had the opportunity to challenge Petitioner's assertions but failed to do so. Accordingly, the court finds that in the totality of circumstances, Respondents breached paragraph 2 of the Consent Order and the actions rise to the level of harassment as defined by N.Y.C. Administrative Code § 27-2004(a)(48).

A tenant who proves harassment may obtain placement of housing maintenance code violations, an injunction restraining a landlord from engaging in such conduct, and civil penalties payable to the NYC Commissioner of Finance. (*See*, N.Y.C Admin. Code § 27-2115(m)(2)). Additionally, a tenant may be entitled to obtain compensatory damages, punitive damages, and attorneys' fees. (*See*, N.Y.C. Admin. Code §27-2115(o). The petition seeks all such remedies.

Therefore, the court directs Respondent/Owner to forthwith cease from engaging in any conduct in violation of N.Y.C. Admin. Code § 27-2004(a)(48) towards Petitioner and directs DHPD to place a "C" violation on the subject premises for harassment. Furthermore, N.Y.C. Admin. Code § 27-2115(m)(2) mandates an award of civil penalties of no less than \$2,000.00 and no more than \$10,000.00. Therefore, the court awards HPD civil penalties in the amount of \$2,000.00 against Respondents.

Compensatory damages, including relocation costs, are permissible in an HP proceeding. However, the award cannot be contingent or speculative and must be ascertainable to a degree of reasonable certainty. (*See, Allen v. 219 24<sup>th</sup> Street LLC*, 67 Misc. 3d 1212(A) [Civ. Ct. NY 2020]; *see also, E.J Brooks Co. v. Cambridge Sec. Seals*, 31 NYS 3d 441, 448-49 (2018); *Revilla v. 620 W 182<sup>nd</sup> St. Heights Assocs. LLC*, 47 Misc. 3d 1211 (a) [Civ. Ct. NY 2015]; *Gonzalez v. Kwik Realty LLC*, 42 Misc.3d 433 [Civ. Ct. NY Co. 2013]). On the other hand, punitive

damages both punish and set an example to others. (*See, Allen v. 219 24<sup>th</sup> Street LLC supra* citing *Bi Economy Mkt. Inc v. Harleystville Inc. Co. of NY*, 10 NY3d 187, 193-94 [2008]).

Although, punitive damages are not calculated using a set formula, they should bear a reasonable relation to the harm done. (*See, Allen v. 219 24<sup>th</sup> Street LLC supra*).

Petitioner did not prove compensatory damages, as she did not demonstrate any loss of property due to Respondents' actions or that Respondents are responsible for the disappearance of her bicycles. As such, in the absence of such proof the court cannot award Petitioner compensatory damages pursuant to N.Y.C Admin. Code § 27-2115(o).

Finally, based on the credible testimony of continued and persistent harassment that did not abate even after the October 20, 20220 Consent Order, the court awards punitive damages to Petitioner in the sum of \$10,000.00. Therefore, the court awards Petitioner a total money judgment in the amount of \$10,000.00.

**ACCORDINGLY, IT IS ORDERED** that the court makes a finding that Respondents have engaged in harassment against Petitioner in violation of N.Y.C. Admin. Code § 27-2004(a)(48)(b)(e)(f)(f-4) and 27-2004(a)(48)(g), and its further

**ORDERED** that HPD place a "C" violation for harassment on the subject premises, upon service of a copy of this order together with notice of entry by any party on HPD, and it is further

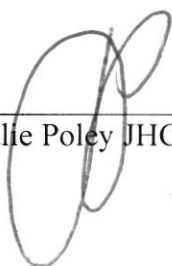
**ORDERED** that the Court directs Respondents to cease all harassment against Petitioner as defined in N.Y.C. Admin. Code § 27-2004(a)(48); and it is further

**ORDERED** that the Court awards Petitioner a judgment in the amount of \$10,000.00 against Respondents, jointly and severally, as punitive damages; and it is further

**ORDERED** that the Court awards HPD civil penalties against Respondents in the amount of \$2,000.00 to be enforced as against the Building at Block 06774 Lot 0012 in borough of Brooklyn, and it is further

This constitutes the Decision/Order of this court, a copy of which is uploaded to NYSCEF.

Date: Brooklyn, New York  
September 30, 2022

  
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Julie Poley JHC  
Hon. Julie Poley