

**435 Cent. Park W. Tenant Assn. v Park Front Apts.,
LLC**

2023 NY Slip Op 30798(U)

March 17, 2023

Supreme Court, New York County

Docket Number: Index No. 452296/2016

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 452296/2016

435 CENTRAL PARK WEST TENANT ASSOCIATION,
YASUTO TAGA, LYDIA BAEZ, CESAR PENA, JORGE
MARTINEZ, MARTHA ARIF, JOY HARRIS, ALTON SWIFT,
JENNIE MORTON-GARCIA, MARTHA ADAMS, ALLADIN
WALTERS, VICTORIA FRASIER, JOSE REGALADO,
JUAN HUNTT, CHRISTINE BARROW, GEORGE PARKER,
BJORG JEAN-PIERRE, MARIA CRUZ, HIRAM CHAPMAN

MOTION DATE 06/01/2022

MOTION SEQ. NO. 005

Plaintiff,

**DECISION + ORDER ON
MOTION**

- v -

PARK FRONT APARTMENTS, LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 233, 234

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and based on multiple discovery conferences and correspondence between the Court and the parties in an attempt to resolve this discovery dispute, Defendant Park Front Apartments, LLC's ("Defendant") motion seeking discovery sanctions or the issuance of a conditional order against Plaintiffs Victoria Frasier and Christine Barrow ("Subject Tenants") is granted. Based on correspondence to the Court, this motion as it pertains to Plaintiff Cesar Pena is moot.

This motion is based on a Decision and Order issued by Justice Edmead dated June 24, 2021, wherein Defendant was granted leave to engage in post-note of issue discovery regarding the injury Plaintiffs suffered as a result of Defendant's allegedly fraudulent conduct regarding a recertification process for HUD benefits in March 2001 (NYSCEF Doc. 173). Despite over a year and a half passing, the Subject Tenants have still not produced the documents pursuant to Justice

Edmead's prior order. The Subject Tenants oppose the instant application by arguing they are not required to show actual injury as part of their rent overcharge claims. The Court rejected this argument for the reasons discussed in its Decision and Order on motion sequence 004. Therefore, the Court directs the parties to proceed as follows:

A. Christine Barrow

Although not attached to the Subject Tenants' opposition, during conferences and via correspondence, it is undisputed that Ms. Barrow is in an out-of-state nursing home due to a medical condition. Nonetheless, there are outstanding discovery demands related to her. To that end, within fourteen (14) days of entry of this Decision and Order, the parties are directed to submit a proposed discovery schedule directing Ms. Barrow or her designee to provide the appropriate/responsive documents. The proposed schedule shall be sent via e-mail to this Court and uploaded to NYSCEF. In the event the parties are unable to agree to a discovery schedule, the Court will issue the discovery schedule. There must be a good-faith effort on behalf of Ms. Barrow or her agent to provide any requested authorizations or affidavits as they relate to Justice Edmead's June 2021 order. In submitting their proposed discovery, and in the interest of wrapping up the limited post-note of issue discovery as soon as possible, the parties are directed to complete any disclosure as it relates to Ms. Barrow within 60 days of entry of the proposed discovery schedule. In the event Ms. Barrow or her agents fail to abide by the discovery schedule or fail to demonstrate a good-faith attempt in abiding by the discovery schedule her Complaint may be dismissed for failure to provide discovery after submission of an Affidavit or Affirmation of Noncompliance.

B. Victoria Frasier

Defendant seeks information related to Ms. Frasier's children as there is evidence her children lived with her and produced income which would have needed to be reported had Ms.

Frasier recertified for HUD benefits. This information is relevant and necessary to Defendant's defense of the alleged fraudulent scheme to deregulate Ms. Frasier's apartment. However, this information may also be in the hands of non-parties who are not represented by Ms. Frasier's attorney. To that end, Ms. Frasier can either obtain the information sought from her children and submit an affidavit showing compliance to that effect, or Ms. Frasier must provide Defendant with her children's current addresses in order that information may be subpoenaed.

If Ms. Frasier fails to either (a) obtain and provide the information sought from her children by Defendant within 60 days of entry of this Decision and Order or (b) fails to provide her children's addresses to Defendant within fourteen (14) days of entry of this Decision and Order, Ms. Frasier's Complaint may be dismissed for failure to comply with the provisions of the CPLR governing discovery.

Finally, to ensure compliance with this Decision and Order, the parties are directed to appear for an in-person conference with the Court on April 19, 2023 at 2:30 p.m. in 60 Centre Street, Room 442, New York, New York.

Accordingly, it is hereby,

ORDERED that within fourteen (14) days of entry of this Decision and Order, the parties are directed to submit a proposed discovery schedule and a plan to obtain the required documents sought from Plaintiff Christine Barrow; and it is further

ORDERED that Plaintiff Victoria Frasier must either (a) provide Defendant with her children's addresses within fourteen (14) days of entry of this Decision and Order or (b) stipulate to cooperate with Defendant in obtaining the requested affidavits, documentation, and/or authorizations from her children related to their income or education status from 2000-2001; and it is further

ORDERED that failure to abide by this order may result in the dismissal of Plaintiffs Christine Barrow and Victoria Frasier's Complaint; and it is further

ORDERED that based on correspondence from the parties, this motion as it relates to Plaintiff Cesar Pena is now moot; and it is further

ORDERED that the parties are directed to appear for an in-person conference with the Court on April 19, 2023 at 2:30 p.m. in 60 Centre Street, Room 442, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

3/17/2023
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	