Independent 435 CPW Tenants' Assn. v
Park Front Apts., LLC

2023 NY Slip Op 31755(U)

May 23, 2023

Supreme Court, New York County

Docket Number: Index No. 152192/2019

Judge: Mary V. Rosado

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** *Justice* **PART** **33M**

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INDEPENDENT 435 CPW TENANTS' ASSOCIATION, NICOLE IGLICKI, ELLIOT IGLICKI, RAFAEL MARINELLI, JOEL GOLONBECK, JACOB SNIR, URIJAH KAPLAN, ARIEL ENNIS, MORDECHAI GREENSPAN, NAFTALI COHEN, SHANIE KORABELNIK, ILAN SCHWED, AMANDA SHAFRAN, JOSHUA FRANKEL, RACHEL BERGER, JONATHAN STOKAR, CHAVIE LIEBER, RENA DASHIFF, ELIANE DREYFUSS, JOSHUA GLAZER, MIRIAM COOPER, KATHERINE ASHMAN, MICHAEL STEIN, ELIZABETH BASKIN, SHAY SHAUL, SHIRA GIDDING, SCOTT SCHREIBER, JESSICA SCHREIBER, ROI KLIPER, SCOTT RAVEED, JUDY DICK, SARAH KOHN

Plaintiff,

- v -

PARK FRONT APARTMENTS, LLC,

Defendant.

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INDEX NO. 152192/2019

MOTION DATE 09/06/2022

MOTION SEQ. NO. *001*

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 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, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269

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

Upon the foregoing documents, and after oral argument, which took place on February 28, 2023, where W. Miller Hall, Esq. appeared on behalf of all Plaintiffs ("Plaintiffs" or "Tenants") and Jeffrey Turkel, Esq. and Adam Lindenbaum, Esq. appeared for Defendant Park Front

Apartments, LLC ("Defendant" or "Landlord"), Tenants' motion for summary judgment is granted in part and denied in part. Landlord's cross motion for summary judgment is granted.

I. Background

This is an action seeking declaratory judgment, rent overcharge, and treble damages pursuant to the leasing of apartments located at 435 Central Park West, New York, New York (the "Building") (*see generally* NYSCEF Doc. 1). There is a companion case titled *435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, Sup. Ct., NY Co. Index No.: 452296/2016 (the "Companion Action"). In that action, the First Department determined that the Building was subject to rent stabilization since April 12, 2011, when certain Housing and Urban Development ("HUD") regulations ceased preempting local rent stabilization laws (*see 435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 164 AD3d 411 [1st Dept 2018]). Landlord's attorneys sought leave to appeal the First Department's decision regarding preemption. Leave was denied.

On February 28, 2019, shortly after the First Department's decision, Plaintiffs initiated this action. Plaintiffs rely largely, if not entirely, on the First Department's decision to assert their claims. Plaintiffs allege they were each entitled to, but not provided, rent stabilized leases either prior to or after the decisions in the Companion Action (NYSCEF Doc. 1 at ¶¶ 10-11). Plaintiffs seek overcharge calculations with a base date rent of February 28, 2015 (*id.* at ¶ 15). Plaintiffs further seek a declaration that their apartments are covered by and protected by New York's rent stabilization laws (*id.* at ¶ 49). They demand overcharge damages in an amount equal to the difference between their monthly rent payments and the legal regulated rent for their apartments (*id.* at ¶ 53). They allege that Defendant was on notice of the legal requirements of the Plaintiffs rent and have remained collecting overcharges even after the determinations in the Companion

Action (*id.* at ¶¶ 57-58). Based on this, Plaintiffs allege Defendant's overcharges are willful (*id.* at ¶ 60). Plaintiffs also seek attorneys' fees (*id.* at ¶¶ 61-65).

Defendant filed its Answer on May 1, 2019 (NYSCEF Doc. 3). Defendant reiterated its preemption defense (*id.* at ¶ 33). Defendant also counterclaimed for declaratory judgment seeking a declaration that the Building has always been subject to HUD preemption from local rent regulation (*id.* at ¶ 38). The Note of Issue was filed on April 20, 2022 (NYSCEF Doc. 12).

Plaintiffs filed this motion for summary judgment on August 18, 2022 (NYSCEF Doc. 13). Plaintiffs seek summary judgment declaring (1) that their apartments are subject to rent stabilization and a determination of the legal rents for each apartment at issue; (2) finding Defendant liable for rent overcharges and that such overcharges be calculated based upon a rent frozen on the base date; (3) treble damages for willful rent overcharges; and (4) attorneys' fees (*id.*). Plaintiffs argue that Defendant is collaterally estopped based on the First Department's determination in the Companion Action from asserting that the apartments at issue in this action are not subject to rent stabilization (NYSCEF Doc. 140). Plaintiffs assert that the rent should be frozen, and that Defendant is not entitled to collect any rents above the amount of the base date rent pursuant to RSL §26-517(e) (*id.*). Finally, Plaintiffs argue that treble damages are appropriate because despite multiple decisions holding the Building is subject to rent stabilization, Defendant did not register any of the apartments at issue until April of 2022 (*id.*).

On November 14, 2022, Defendant cross-moved for summary judgment (NYSCEF Doc. 150). Defendant seeks partial summary judgment dismissing the claims of eleven plaintiffs and apartments (*id.*). Namely, Defendant seeks to dismiss the claims of Plaintiffs Frankel and Berger (Apt. 1F), Dashiff (Apt. 3H), Schreiber (Apt. 3J), Stein and Baskin (Apt. 4M), Ennis (Apt.1S), Cooper (Apt. 1A), Dreyfuss (Apt. 1P), Snir (Apt. 3L), Golombeck (Apt. 3M), Kliper (Apt. 4J),

and Cohen and Korabelnik (Apt. 6A) (*id.*). Defendant argues that it is entitled to summary judgment as to these Plaintiffs because their apartments were deregulated through luxury deregulation (NYSCEF Doc. 252). Defendant also argues that a rent freeze and treble damages are not warranted here (*id.*). Defendant asserts that DHCR advised Defendant in 1999 that it agreed with HUD that so long as HUD regulation continued, preemption of New York's rent stabilization laws would remain in effect. HUD informed Defendant that HUD regulation would continue through at least 2026. It was not until 2017 and 2018, through decisions of the New York County Supreme Court and the First Department, that there was a finding that preemption did not apply and the Building was subject to rent stabilization. Defendant claims that based on its good-faith reliance on prior DHCR and HUD advice, it cannot be found to have willfully overcharged Plaintiffs. Defendant claims it still reserves its argument regarding the preemption claim and intends to make its appeal to the Court of Appeals as of right.

On January 11, 2023, Plaintiffs filed their reply brief and opposition (NYSCEF Doc. 257). Plaintiffs argue that luxury deregulation is unavailable because Defendant never complied with RSL § 26-504.2(b). Plaintiffs also assert that luxury deregulation is not available until tenants are provided a rent stabilized lease, and here, none of the Plaintiffs were even provided rent stabilized leases. Plaintiffs also argue that RSL §26-517(e) bars any increases in rent because Defendant failed to register rents with DHCR. Plaintiffs claim that Defendant has failed to rebut willfulness.

On January 25, 2023, Defendant filed its reply (NYSCEF Doc. 263). Defendant claims that the apartments in question have been luxury deregulated, and Plaintiffs' arguments to the contrary are without merit. Defendant cites to specific DHCR decisions for apartments in the Building at issue which have allowed for luxury deregulation. Defendant argues that these decisions are entitled to administrative deference. Defendant also argues that its good-faith reliance on advice

from DCHR excuses its non-compliance with the RSL in claiming luxury deregulation. Defendant asserts its cross-motion is proper as it is based upon defenses asserted in its Answer. Finally, Defendant claims a finding of willfulness is improper at this juncture.

II. Discussion

A. Standard

Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact. (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

B. Plaintiffs' Motion for Summary Judgment on its Declaratory Judgment Cause of Action and Defendant's Cross-Motion for Summary Judgment

Plaintiffs' motion for summary judgment on its declaratory judgment cause of action is granted in part and denied in part. As a preliminary matter, the Court is bound by the First Department's decision in *435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 164 AD3d 411 (1st Dept 2018). There, the First Department expressly held that the Building was subject to rent stabilization in 2011. Therefore, unless Defendant raises a triable issue of fact regarding why the

apartments which are the subject of this litigation should not be subject to rent stabilization, Plaintiffs are entitled to summary judgment on their first cause of action.[1]

Defendant cross-moves for partial summary judgment dismissing certain Plaintiffs' causes of action on several grounds. One argued basis is that some Plaintiffs' apartments were deregulated pursuant to luxury deregulation. Defendant argues that by virtue of RSC § 252.1(j) and RSL § 26-512(b)(3), when preemption ended on April 12, 2011 pursuant to the First Department's decision in *435 Cent. Park W. Tenant Assn.*, "the initial legal regulated rent was that which was charged and paid by the tenant in occupancy on the date" that preemption ended. Defendant asserts that five subject apartments were luxury deregulated as soon as preemption ended. Defendant asserts that when vacancy increases and/or IAI increases are added to the initial legal regulated rents in effect on April 12, 2011, luxury deregulation deregulated another six of the Plaintiffs' apartments by operation of law.

Defendant argues that its failure to comply with RSL § 26-504.2(b) should not bar luxury deregulation because Defendant had no way of knowing that the building was subject to the RSL on April 12, 2011, since DHCR informed Defendant in 1999 that the Building would remain subject to preemption due to HUD regulation.[2] Defendant cites to several trial court and DHCR decisions which have rejected the argument that failure to comply with notice requirements prohibits deregulation which occurs by operation of law.

[1] Although Defendant reiterates preemption arguments in opposition, the Court finds Defendant's preemption argument is inapplicable. The First Department already ruled that preemption ended in 2011.Therefore, the preemption argument alone is insufficient to defeat summary judgment on Plaintiffs' first cause of action.

[2] The Court highlights that DHCR, the trial court judge who originally ruled on the pre-emption question, and the First Department, all had different opinions as to when the building became subject to rent stabilization. This Court mentions this fact to show the muddied and unclear nature of how the HUD regulations pre-empt the RSL, and how it is unfair to penalize Defendant for not understanding when HUD regulation ended and local rent regulations began, especially when multiple authorities have provided conflicting opinions.

Defendant argues that RSL § 26-517(e) and its rent freeze provisions do not apply here where Defendant's failure to register at the time of deregulation resulted from Defendant's good faith reliance on DHCR advice that the units in question are not rent-stabilized. Defendant argues that its reliance on DHCR's opinion should also bar treble damages. HUD provided a letter dated February 27, 2018, taking the position that the building is still subject to preemption[3] (NYSCEF Doc. 234).

Plaintiffs argue that pursuant to RSC §2526.1(a)(3)(iii), luxury deregulation is inapplicable where no rent stabilized lease was provided to a tenant following an exemption of more than four years. Plaintiffs cite to the First Department's decision in *Matter of Aej 534 E. 88th v NY State Div. of Hous. & Community Renewal*, 194 AD3d 464 (1st Dept 2021). That case dealt with an exemption from rent stabilization based on RSC 2520.11(f), which allows for an apartment to be exempt from rent stabilization when it is rented by a hospital and used to house hospital staff. Plaintiffs also argue that Defendant should not be able to assert luxury deregulation on summary judgment since they never pled in their Answer that the apartments at issue are deregulated.

Defendant counters this argument by asserting that the instant situation is not analogous to *Aej* but is far more akin to overcharge cases brought post *Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 (2009), where many landlords, relying on DCHR advice that buildings receiving J-51 benefits could be luxury deregulated, stopped treating apartments as rent-stabilized. In these post-*Roberts* cases, the First Department rejected a prohibition on luxury deregulation (*see Park v DHCR*, 150 AD3d 105 [1st Dept 2017] *lv. to appeal dismissed* 30 NY3d 961 [2017]). In *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, the

[3] The Court is aware that the HUD letter does not have any legal force in this Court given the First Department's decision in *435 Cent. Park W. Tenant Assn*. Rather, the HUD letter is discussed as a pertinent factor in determining whether punitive measures such as treble damages or a rent freeze should be imposed on Defendant.

Court of Appeals went so far as to state that in *Roberts* cases "rent freezing is inapplicable…where the failure to timely register resulted directly from DHCR's endorsement of a misunderstanding of the law" (35 NY3d 332, 358 n. 9 [2020]; *see also Sandlow v 305 Riverside Corp.*, 201 AD3d 418, 419 [1st Dept 2022] [where defendant relied on DHCR to support his belief that receipt of J-51 benefits would not affect apartment regulation, although belief was misplaced, testimony does not show a conscious and knowing violation of the law] *Gridley v Turnbury Village, LLC*, 196 AD3d 95 [2d Dept 2021] ["once a late registration is filed, the owner 'shall not be found to have collected an overcharge' based upon the rent increases, if the 'increases in the legal regulated rent were lawful except for the failure to file a timely registration'"]). Defendant also points to multiple DHCR Orders pertaining to apartments in the Building which are not subject to this or prior litigation which DHCR has ruled have been luxury deregulated subsequent to April 11, 2011 (*see In re Popovich,* DHCR Docket No. GS410012R; *In re Lichtschein*, DHCR Docket No. HU410095R). Defendant asserts that DHCR's determination that apartments in the Building are subject to luxury deregulation is entitled to administrative deference (*Andreyeva v New York Health Care, Inc.*, 33 NY3d 152, 174 [2019]; *see also Matter of West 97th St. Realty Corp. v New York State Div. of Hous. & Community Renewal*, 51 AD3d 586 [1st Dept 2008]).

As a threshold matter, taking into account the unique circumstances of the Building at issue, and the prior DHCR Orders, the Court agrees with Defendant that the issues in this case are akin to post-*Roberts* cases and that Defendant should not be barred from asserting luxury deregulation where it relied in good faith on DHCR and HUD opinions that the building was not subject to local rent stabilization laws. As a matter of equity, if Defendant must retroactively bear the burdens of the rent stabilization laws when it relied in good faith on DHCR and HUD opinions, then Defendant also must be entitled to the defenses afforded by the rent stabilization laws.

The Court also rejects Plaintiffs' argument that the defense of luxury deregulation is being raised for the first time in this motion for summary judgment. The Answer contains an affirmative defense which encapsulate luxury deregulation – namely that the Plaintiffs' claims are barred by documentary evidence (*see* NYSCEF Doc. 3 at ¶¶ 31-32). Moreover, Defendant provided a direct denial to Plaintiffs' allegations that all the apartments are subject to rent regulations. Plaintiffs cannot now be surprised that Defendant is using luxury deregulation as a defense to Plaintiffs' assertion that the Apartments are rent stabilized.

Upon review of the exhibits and affidavits submitted on the instant motion for summary judgment, the Court grants Defendant's motion for partial summary judgment, and Plaintiffs' motion for summary judgment as to those apartments is denied.[4] The affidavit of Sinclair Haberman, a member of Defendant, and the accompanying exhibits to his affidavit, establish that certain apartments were subject to luxury deregulation (*see* NYSCEF Doc. 151).

Plaintiffs Frankel and Berger occupied apartment 1F on September 3, 2016 and vacated on March 26, 2018 (*id.* at ¶¶ 10-11, *see also* NYSCEF Doc. 158). Prior to Frankel and Berger, Chaya Cooper lived in Apartment 1F (*see* NYSCEF Doc. 156). Cooper's rent at that time was $2,375 (*id.*). When Cooper vacated on January 31, 2014, the vacancy allowance in effect was 16.25%. This brought the rent to $2,760.94, more than the deregulation threshold of $2,500 in effect at the time of Cooper vacating. Therefore, by operation of law, Frankel and Berger did not occupy a rent-stabilized apartment, and their claims must be dismissed.

Plaintiff Dashiff occupied Apartment 3H on October 1, 2011 (NYSCEF Doc. 161). Marc Freitag lived in Apartment 3H prior to Dashiff and was paying $2,248.94 on May 30, 2011 (NYSCEF Doc. 160). Because luxury deregulation on May 30, 2011, was $2,000 per month,

[4] The Court highlights that Plaintiffs do not dispute Defendant's calculations, but solely disputes whether Defendant is entitled to assert luxury deregulation as a defense to these Plaintiffs' overcharge claims.

Apartment 3H was deregulated as a matter of law before Dashiff took occupancy. Therefore, Dashiff's claims must be dismissed.

Plaintiff Schreiber moved into Apartment 3J on June 15, 2014 (*see* NYSCEF Doc. 164). Prior to Schreiber, Apartment 3J was occupied by Mann and Hagege, who paid $2,200.83 per month (NYSCEF Doc. 164). When Mann and Hagege vacated on March 29, 2014, the vacancy allowed was 16.25%, which increased the rent to $2,557.5. The deregulation threshold on March 29, 2014, was $2,500. Therefore, when Schreiber occupied Apartment 3J on June 15, 2014, the apartment had been luxury deregulated. Thus, Schreiber's claims must be dismissed.

Plaintiffs Stein and Baskin occupied Apartment 4M in 2013 (NYSCEF Doc. 167). Prior to Stein and Baskin, Apartment 4M was occupied by Jonathan Seliger. Seliger vacated in 2012, at which time he was paying $2,300 per month (NYSCEF Docs. 165-166). The vacancy allowance for a one-year vacancy at the time of Seliger's vacancy was 16.5%, which caused the rent to increase to $2,679.50, more than the $2,500 deregulation threshold. Therefore, when Stein and Baskin occupied Apartment 4M, it was deregulated. Stein and Baskin's claims are dismissed.

Plaintiff Ennis occupied Apartment 1S on September 1, 2014 (NYSCEF Doc. 171). Ennis vacated on December 31, 2020 (NYSCEF Doc. 151 at ¶ 29). Prior to Ennis, Apartment 1S was occupied by Miriam Goldberg (NYSCEF Docs. 169-170). Goldberg was paying $2,001 per month in rent. When Goldberg vacated on October 31, 2011, the lowest possibly vacancy allowance was 16.5%, which increased the rent to $2,331.17. Thereafter, Defendant employed Tunari Contracting to demolish and renovate the kitchen in Apartment 1S (*see* NYSCEF Doc. 172). These renovations cost $10,750.64 (*id.*). This provided an IAI increase of $179.18, which when included with the vacancy increase, brought the rent up to $2,510.35. The deregulation threshold in 2014 was $2,500, meaning after the vacancy and IAI increases, Apartment 1S was subject to luxury deregulation.

Thus, Ennis moved into a deregulated apartment on September 1, 2014, meaning her claims must be dismissed.

Plaintiff Cooper moved into Apartment 1A on June 15, 2014 and vacated on May 24, 2020 (NYSCEF Docs. 151 at ¶ 35 and 176). Rita Guerin lived in Apartment 1A prior to Cooper and vacated on April 27, 2014 (NYSCEF Docs. 151 at ¶ 30 and 173-174). At the time of her vacating, Guerin was paying $2,039.14 in rent. The allowable vacancy increase was 16.25%, which increased the rent to $2,370.50. In May 2014, Defendant contracted Lagreca Contracting to demolish and renovate Apartment 1A with new insulation, sheetrock, electrical service, a new bathroom, a new kitchen, and new wood floors (NYSCEF Docs. 151 at ¶ 32 and 175). The cost of this work was $54,685, which allowed an IAI increase of $911.42. This allowed the rent to increase to $3,281.92, more than the $2,500 rent deregulation threshold. Thus, when Cooper moved into the apartment on June 15, 2014, the apartment was deregulated. Cooper's claims are dismissed.

Plaintiff Dreyfuss moved into Apartment 1P on August 1, 2012 and moved out on September 30, 2020 (NYSCEF Doc. 151 at ¶¶ 40-41). Prior to Dreyfuss, George Charlton resided in Apartment 1P (NYSCEF Doc. 178). Charlton was paying $1,532.98 when he vacated on May 11, 2012 (*id.*). When Charlton vacated, a one-year vacancy of 16.5% was added which increased the rent to $1,785.92. Thereafter, Lagreca Contracting was contracted to demolish and renovate apartment 1P (NYSCEF Doc. 151 at ¶ 38). New insulation, sheetrock, electrical service, and wood floors were installed. A new bathroom and kitchen were also included. The costs of these renovations were $54,685 (*see* NYSCEF Doc. 179). This provided an IAI increase of $911.42, which when combined with the vacancy increase, caused the legal rent to increase to $2,697.34. This caused luxury deregulation to take place, so that when Dreyfuss moved into Apartment 1P on August 1, 2012, it was deregulated. Therefore, Dreyfuss' claims must be dismissed.

Plaintiff Snir moved into the Apartment 3L on March 1, 2012 (NYSCEF Doc. 184). Prior to Snir, Angel Ramos lived in Apartment 3L. Ramos moved out on October 31, 2011, and was paying $1,426.03 (NYSCEF Docs. 181-182). Pursuant to the allowable 16.5% vacancy increase, the legal regulated rent rose to $1,661.32 upon Ramos' vacancy. In November 2011, Defendant contracted with Lagreca Contracting to demolish and renovate Apartment 3L (NYSCEF Doc. 183). The costs of these renovations were $54,685 (*id.*). Thus, the allowable IAI increase, when combined with the vacancy allowance, increased the rent to $2,572.74, more than the $2,500 rent deregulation threshold then in effect. Thus, when Snir moved into the apartment on March 1, 2012, Apartment 3L was deregulated. Therefore, Snir's claims must be dismissed.

Plaintiff Golombeck moved into apartment 3M on May 15, 2012 (NYSCEF Doc. 188). Prior to Golombeck, Tomas Sanchez lived in Apartment 3M. Sanchez was paying $1,426.03 per month in rent (NYSCEF Doc. 185-186). When Sanchez vacated, the 16.5% vacancy allowance applied, increasing the rent to $1,661.32. Like the preceding apartments, Lagreca Contracting Inc. was employed by Defendant on March 2012 to do a gut renovation of the Apartment. Like the other apartments, the renovation cost $54,685 (NYSCEF Doc. 187). This allowed for IAI increases, which when combined with the vacancy allowance, brought the rent to $2,572.74. This deregulated the apartment, since the rent deregulation in effect was $2,500. Therefore, Golombeck took possession of a deregulated apartment, and his claims must be dismissed.

Plaintiff Kliper moved into Apartment 4J on February 1, 2014 (NYSCEF Doc. 192). Prior to Kilper, Maria Gomez lived in Apartment 4J. When Gomez vacated in October of 2013, she was paying $1,896.87 (NYSCEF Docs. 189-190). With the 16.25% vacancy increase, this brought the rent to $,2205.11. In November of 2013, Defendant contracted with Lagreca Contracting for a complete gut renovation of Apartment 4J akin to the other apartments (NYSCEF Doc. 191). The

cost of the renovation was $54,685. This IAI increase, when combined with the vacancy increase, brought the rent to $3,116.53, in excess of the $2,500 rent deregulation threshold. Thus, when Kliper moved into a deregulated apartment. Kliper's claims are dismissed.

Plaintiffs Cohen and Korabelnik moved into Apartment 6A on June 1, 2012 (NYSCEF Doc. 196). Prior to Cohen and Korabelnik, Ruth Rodriguez lived in Apartment 6A. Rodriguez vacated Apartment 6A on December 31, 2011, at which time she was paying $1,641.42 per month (NYSCEF Docs. 193-194). Adding the vacancy allowance of 16.5% when she vacated, the rent rose to $1,912.25. In January of 2012, as with other apartments, Defendant contracted with Lagreca Contracting Inc. to conduct a gut renovation of Apartment 6A (NYSCEF Doc. 195). Like the other renovations, the renovations on Apartment 6A costs $54,685 (*id.*). When the IAI increase was added to the vacancy allowance, the legal regulated rent rose to $2,823.67, in excess of the $2,500 deregulation threshold. Therefore, when Cohen and Korabelnik moved in on June 1, 2012, the apartment was deregulated. Thus, Cohen and Korabelnik's claims must be dismissed.

Therefore, to the extent Plaintiffs move for summary judgment on the aforementioned Plaintiffs' claims, that branch of the motion for summary judgment is denied, and Defendant's cross-motion for summary judgment is granted. However, as to the remaining Plaintiffs, their motion for summary judgment on their first cause of action is granted.

C. Plaintiffs' Motion for Summary Judgment seeking Treble Damages and a Rent Freeze

Plaintiffs' motion for summary judgment on its second cause of action seeking liability for rent overcharge based upon a rent frozen on the base date and awarding treble damages is denied.

The Court first addresses willfulness and treble damages. Plaintiffs seek rent overcharge from 2015 through the present. However, it was not until 2018 that the First Department held that the Building was subject to rent stabilization since 2011 (*435 Cent. Park W. Tenant Assn. v Park*

Front Apts., LLC, 164 AD3d 411 [1st Dept 2018]). Prior to that, both DHCR and HUD provided opinion letters to Defendant, upon which Defendant relied, stating that HUD regulation of the Building preempted local rent regulation (*see* NYSCEF Docs. 207 and 234). Based on the conflicting information from multiple authorities, the Court finds there to be, at a minimum, a question of fact as to the willfulness of overcharges from 2015 through August 2, 2018, which is the date of the First Department's decision finding the Building to be subject to rent stabilization since April of 2011. Court of Appeals and First Department case law analyzing analogous situations also makes a finding of treble damages troubling (*Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 398 [2014]; *see also Corcoran v Narrows Bayview Co., LLC*, 183 AD3d 511, 512 [1st Dept 2020] [no finding of willfulness when following DHCR guidance]). As demonstrated by the affidavit of Sinclair Haberman, none of the remaining Tenants' rents have been increased since 2017 or 2018, the year in which the First Department held that the Building is rent stabilized. This too creates an issue of fact, as evidence of the lack of any rent increase after the First Department's decision undercuts an assertion that any overcharges were willful. On the other hand, Defendant failed to provide renewal leases, and did not offer any rebates to any of the Plaintiffs, which prevents this Court from dismissing the willfulness claim. Therefore, the Court cannot make a blanket finding of willfulness as to each of the Plaintiffs' overcharge claims.[5]

The portion of Plaintiffs' motion seeking a rent freeze from the base date of February 28, 2015 is denied. As demonstrated by the affidavit of Sinclair Haberman, none of the remaining Tenants' rents have been increased since 2017 or 2018. As recognized by the Court of Appeals, a rent freeze is a punitive measure which is inapplicable when a landlord relies on DHCR's

[5] However, as explained below, the history of rent increases and lease renewals between some Plaintiffs and Defendant show an issue of fact as to the willfulness of each overcharge. Such willfulness cannot be determined on the record presented on this motion for summary judgment.

endorsement of a misunderstanding of the law (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 358 n. 9 [2020]). Once the First Department's decision in *435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 164 AD3d 411 (1st Dept 2018) was published, all remaining Plaintiffs stopped having any increases to their rent (NYSCEF Doc. 151 at ¶ 127). Given Defendant's reliance on HUD and DHCR interpretations of the law, and because Defendant ceased raising any of the remaining Plaintiffs' rents after the First Department found the Building subject to rent stabilization, a blanket rent freeze for all tenants is inappropriate, especially one dating back to the base date.

While Plaintiffs rely on *215 W 88th St. Holdings v. DHCR*, 143 A.D.3d 652 (1st Dept 2016) for the proposition that a rent freeze is obligatory, this decision is distinguishable from the case at bar and pre-dates following case law which has held there is a good faith exception to punitive rent freezes (*see Regina, supra*; *see also Park, supra*). Indeed, in *215 W 88th St.*, there was a finding and allegations of fraudulent misconduct in attempting to deregulate the apartments, and the default formula was applied to calculate a rent overcharge. The behavior of the landlord in *215 W 88th St.* was not in any good faith reliance on DHCR or HUD guidance. Rather, the conduct of the landlord in *215 W 88th St.* was the epitome of egregious and willful misconduct. Thus, for the aforementioned reasons, the Court finds that the rent freeze which Plaintiffs seek does not apply to the unique and limited facts of this case.[6]

D. Overcharge and Willfulness for Remaining Apartments

The last branch of Plaintiffs' motion for summary judgment seeks damages for rent overcharge. Defendant and Plaintiffs have submitted affidavits with their breakdowns of the legal regulated rent indicating what, if any overcharge has occurred.

[6] In any event, Defendant did register the apartments in 2022 with retroactive registrations going back to 2011, without prejudice to its rights to pursue the pre-emption argument to the Court of Appeals (NYSCEF Doc. 151 at ¶ 118).

i. Marinelli's Tenancy in Apartment 1B

Plaintiff Marinelli has occupied Apartment 1B since June 1, 2013 (NYSCEF Doc. 151 at ¶ 129). On April 12, 2011, when the Apartment first became subject to rent stabilization, Celia Feinman was living in Apartment 1B and was paying a rent of $1,300 (*id.* at ¶ 130). With a Rent Guidelines Board renewal increase of 3.75% when Feinman renewed her lease on October 1, 2011, coupled with a 16.5% vacancy increase on February 26, 2012, the legal rent increased to $1,571.29 (*id.* at ¶¶ 131-132). The next tenant, Caroline Raphael, vacated on May 24, 2013, which permitted a vacancy increase of 18%, raising the legal rent to $1,854.13 (*id.* at ¶ 133). With allowable a Rent Guidelines Board increases since Marinelli signed his lease in June 2013, the legal regulated rent increased to $2,001.49 in 2018 (*id.* at ¶ 134; *see also* NYSCEF Doc. 235). As of 2022, Marinelli is being charged $1,906.78. For every year from the base date rent, Marinelli was underpaying the legal regulated rent. Indeed, although the legal regulated rent on May 24, 2013 was $1,854.13, Marinelli was paying only $1,478.13 for the 2014 lease term. Therefore, Marinelli does not have an overcharge claim. Marinelli has failed to provide any evidence on his motion for summary judgment rebutting Defendant's evidence. Thus, pursuant to CPLR § 3212(b), Marinelli's rent overcharge claim is dismissed.

ii. Frankel and Berger's Tenancy in Apartment 2B

Prior to living in Apartment 1F, which was deregulated pursuant to luxury deregulation, Frankel and Berger lived in Apartment 2B. Defendant does not assert that Frankel and Berger were not overcharged, nor does Defendant assert that Apartment 2B was deregulated during Frankel and Berger's tenancy. The evidence reflects an increase in rent from $1,600.00 on February 28, 2015, to $1,720.00 on October 1, 2015. The failure to provide a rebate based on overcharges, even after the First Department ruled that the Building was subject to rent stabilization, creates a

question of fact as to the willfulness of the overcharges. Therefore, summary judgment is granted as to liability on the overcharge claim, with a total amount of damages to be determined after the willfulness issue is resolved.

iii. Cohen and Korabelnik's Tenancy in Apartment 1I

Plaintiffs Cohen and Korabelnik moved into Apartment 1I on February 1, 2017. A review of Apartment 1I's rental history since the base date of 2015 shows there has been no overcharge. Specifically, Lembert was the prior tenant of 1I who was paying a base date rent of $2,039.14 on February 28, 2015. Lembert renewed her lease on March 1, 2015, and vacated on August 16, 2016, which allowed for a 1% renewal increase followed by an 18% vacancy increase, bringing the legal rent to $2,430.25. Then, in the Fall of 2016, Lagreca Contracting was hired to completely demolish and renovate Apartment 1I at a cost of $54,685, which allowed for an IAI increase of $911.42 (*see* NYSCEF Doc. 238). This raised the legal rent to $3,341.67. However, since Cohen and Korabelnik moved into Apartment 1I on February 1, 2017, their rent was never higher than $2,625.00. Therefore, Cohen and Korabelnik do not have a rent overcharge claim as it relates to apartment 1I, and pursuant to CPLR § 3212(b), their claim should be dismissed.

iv. Shaul and Gidding's Tenancy in Apartment 2N

Plaintiffs Shaul and Giddings resided in Apartment 2N until they vacated in December of 2019 (NYSCEF Doc. 33). On the base date of February 28, 2015, Plaintiffs Shaul and Giddings were paying $2,100. Even with allowable renewal increases, Plaintiffs Shaul and Giddings were still being overcharged their rent. Defendant has proffered no reason as to why this apartment is deregulated, and Defendant does not deny that there was an overcharge. Indeed, in 2017, Shaul and Giddings' rent was $2,526.23, well above an allowable rent of $2,121.00. The failure to provide a renewal lease in 2019 also calls into question the willfulness of the overcharges.

Therefore, while the Court agrees that liability exists for an overcharge, without resolving the issue of willfulness, it is premature to provide judgment in the form of a total calculation on damages.

v. Dick's Tenancy in Apartment 3A

Plaintiff Dick has resided in Apartment 3A since October 1, 2010 (NYSCEF Doc. 37). Dick has made a *prima facie* case that her apartment is rent stabilized and that she has been overcharged $37,622.90. Indeed, on the base date, her rent was $2,300, but it increased every year through 2018 in excess of the allowable amount set forth by the Rent Guidelines Board. Moreover, Dick states that she has not been offered a renewal lease since October 1, 2018, despite the First Department already finding that the Building was subject to rent stabilization during that time. Defendant has not proffered any reason as to why Apartment 3A is deregulated. As explained above, while the rent has not increased since October 1, 2018, the failure to provide a renewal lease or offer any rebate, when Defendant concedes there is an overcharge, creates an issue of fact as to Defendant's willfulness. Therefore, summary judgment is granted on liability for Dick's overcharge claim, with the total amount of damages to be determined after the issue willfulness is resolved.

vi. Glazer's Tenancy in Apartment 3B

Plaintiff Glazer resided in Apartment 3B as of March 1, 2011. Glazer was paying a base date rent of $1,612.50 on February 28, 2015. However, Glazer's rent increased every year until 2018, even though the Rent Guidelines Board did not allow for any increase in 2016 and 2017. Moreover, like other tenants, Glazer has not been offered a renewal lease since March 1, 2018. Defendant has not proffered any reason as to why Apartment 3B is deregulated. Defendant has failed to explain why a renewal lease was not granted. Defendant concedes that there is a rent overcharge and merely asks this Court to award Defendant an offset by the authorized renewal

increases. Therefore, summary judgment is granted on liability for Glazer's overcharge claim, with the total damages to be determined after the issue of Defendant's willfulness in overcharging Glazer is resolved.

vii. Stokar and Lieber's Tenancy in Apartment 3F

Stokar and Lieber resided in Apartment 3F from April 1, 2012 through August 30, 2020. On the base date of February 28, 2015, they were paying $2,043.00. Prior to Stokar and Lieber, Barzilai lived in Apartment 3F. On April 12, 2011, Barzilai was paying $1,900. Barzilai vacated on October 31, 2011, which allowed for a 16.5% vacancy increase. This brought the legal regulated rent to $2,213.50. With Rent Guidelines Board renewal increases, the rent was $2,401.20 in 2018. Stokar and Lieber's rent was, until April 1, 2018, consistently lower than the legal regulated rent. However, on April 1, 2018, when taking into consideration allowable increases based on vacancy and renewal, Stokar and Lieber were being overcharged by $60.00. Even with the renewal increase in subsequent years, Stokar and Lieber were still being overcharged by approximately $30.00 every month in 2019. Therefore, there is liability for overcharge. Moreover, Stokar and Lieber were never provided with a renewal lease and vacated the premises even though the First Department held prior to Stokar and Lieber's vacancy that the Building was subject to rent stabilization. Defendant has not provided any reason why Stokar and Lieber's apartment is deregulated. Therefore, there is an issue of fact as to the willfulness of the overcharges. Summary judgment is granted on liability for Stokar and Lieber's overcharge claim, with the total damages to be determined after the issue of Defendant's willfulness in overcharging is resolved.

viii. Greenspan's Tenancy in Apartment 3N

Plaintiff Greenspan occupied Apartment 3N between May 1, 2013 and June 25, 2020. As detailed by Greenspan's affidavit, his rent increased every year despite some years there being no

allowable renewal increase. Defendant has failed to rebut the fact that Greenspan has been overcharged. Moreover, after not receiving a renewal lease for multiple years, Greenspan ultimately vacated on June 25, 2020. Like the other tenants, the failure to provide a rent stabilized lease after the First Department held that the Building is subject to rent stabilization, plus Defendant's failure to provide any reason why Apartment 3N is not subject to rent stabilization, creates an issue of fact as to whether the overcharges were willful. As such, Greenspan is granted summary judgment on liability for his overcharge claim.

ix. Nicole and Elliot Iglicki's (the "Iglickis") Tenancy in Apartment 3O

The Iglickis lived in Apartment 3O from November 1, 2009 through October 31, 2019. On the base date of February 28, 2015, the Iglickis' were paying $2,325.00. However, their rent increased every year through 2017 despite the Rent Guidelines Board not allowing increases in either 2015 or 2016. Moreover, the Iglickis were not provided with a renewal lease and vacated in 2019. As with the prior Plaintiffs, Defendant has failed to show how Apartment 3O is deregulated, or how the Iglickis were not overcharged. Further, the failure to provide a renewal lease raises an issue of fact as to the willfulness of the overcharge.[7] Thus, while the Iglickis are granted summary judgment on liability for their overcharge claims, the total amount of damages can only be determined once the issue regarding the willfulness of the overcharge is resolved.

x. Kohn's Tenancy and Apartment 3T

There is an issue of fact as to the amount Kohn may be awarded a rent overcharge, if any. Kohn lived in Apartment 3T from April 1, 2008 through February 28, 2021. At the time Kohn moved out, she owed arrears in the amount of $17,464.00, plus statutory interest. However, Kohn

[7] The Court reiterates that given the multiple conflicting guidance from DHCR, HUD, New York Supreme Court, and the First Department, coupled with Defendant not raising any of the Plaintiffs' rent since 2018 when the First Department held that the Building is subject to rent stabilization, there remains an issue of fact as to willfulness. Moreover, the timing of when the overcharge became willful cannot be resolved on this motion for summary judgment.

claims through March of 2020, she was overcharged $17,393.4 (NYSCEF Doc. 38 at ¶ 21). Kohn also argues that she only underpaid $5,493.75. She claims that the ledger is incorrect in that it reflects charges for $2,608.82 for March and April of 2021 after she vacated. Given the record before the Court, whether Kohn owes arrears or whether Defendant overcharged Kohn is an issue of fact which cannot be determined on the papers provided. Moreover, as with the other tenants, Kohn was never offered a renewal lease, and therefore, if she was overcharged, the question of whether any overcharges after 2018 were willful remains in dispute. Therefore, summary judgment as to Kohn's overcharge claim is denied.

xi. Ashman's Tenancy and Apartment 5P

Ashman lived in Apartment 5P from June 15, 2012 through January 31, 2019. On the base date of February 28, 2015, Ashman was paying $1,635.00 in rent. Prior to Ashman living in 5P, a tenant named Pagan lived in 5P. Pagan was paying $916.25 when the Apartment became subject to rent stabilization. Pagan vacated on April 30, 2012, which allowed for a 16.5% vacancy increase, which raised the legal regulated rent to $1,067.43. Thereafter, Lagreca Contracting was employed to completely demolish and renovate apartment 5P at the cost of $62,225.00. This allowed for an IAI increase of $1,037.08. This increased the legal rent to $2,104.51. With allowable Rent Guidelines Board increases, the legal regulated rent was $2,146.60 in June of 2013, $2,232.46 in June of 2014, $2,254.78 in June of 2015, and $2,282.97 in June of 2018. However, for each of these years, Ashman consistently underpaid her rent. Indeed, by July 1, 2018, she was only paying $2,183.50. Her rent never increased, and she vacated the apartment in January of 2019. Ashman does not have an overcharge claim, and pursuant to CPLR § 3212(b) her claim is dismissed.

xii. Schwed and Shafran's Tenancy in Apartment 6F

Schwed and Shafran have lived in Apartment 6F from September 1, 2010 through the present. On February 28, 2015, Schwed and Shafran were paying a base rent of $2,200. Nonetheless, Schwed and Shafran's rent was increased each year by $100.00 except for 2018, when the rent was increased to $2,687.50 from $2,500.00. These increases occurred in excess of the Rent Guidelines Board's allowable renewal increases. Defendant does not dispute an overcharge occurred but asks for an offset from the authorized renewal increases. While the rent has not increased since September 2018, there has been no rebate offered based on past overcharges, nor have Schwed and Shafran been given a renewal lease. Moreover, Defendant does not assert that Apartment 6F is deregulated. Therefore, there is an issue of fact as to whether these overcharges have been willful. Thus, Schwed and Shafran are granted summary judgment on liability for their overcharge claims, with damages being determined after the issue of willfulness is resolved.

xiii. Kaplan's Tenancy in Apartment 6M

Kaplan has lived in Apartment 6M from March 1, 2009 through the present. Kaplan was paying $2,100 on February 28, 2015. Nonetheless, Kaplan's rent increased each year until March 1, 2018 in excess of a Rent Guidelines Board guidelines. Like other tenants, while Kaplan's rent has not increased since 2018, she has not been offered a renewal lease nor has she been offered a rebate. Moreover, Defendant does not rebut that an overcharge occurred, but merely ask for a setoff. Defendant does not provide any reason as to why Apartment 6M is not subject to rent stabilization. Therefore, like Kaplan is granted summary judgment on liability for her overcharge claims, with damages being determined after the issue of willfulness is resolved.

xiv. Raved's Tenancy in Apartment 6N

Raved has lived in Apartment 6N from May 1, 2010 to the present. On February 28, 2015, Raved was paying a base date rent of $1,771.55. Nonetheless, Raved received significant rent increases from 2015. On March 30, 2015, the rent increased to $1,904.02. On March 30, 2016, the rent increased to $2,047.25. On March 30, 2017, the rent increased to $2,200.79. Finally, on March 30, 2018, the rent increased to $2,365.85. While the rent has not been increased since March of 2018, the prior increases were in excess of a Rent Guidelines Board allowances, and Raved has not been offered any rebates or renewal leases. Defendant does not dispute that an overcharge occurred, and Defendant does not argue that Apartment 6N is not subject to rent stabilization. Rather, like other tenants, Defendant requests an offset by authorized a Rent Guidelines Board increase. Thus, Raved is granted summary judgment on liability for his overcharge claims, with damages being determined after the issue of willfulness is resolved.

The branch of the Plaintiffs' motion seeking attorneys' fees is denied as premature. While some Plaintiffs' have partially prevailed on their declaratory judgment and rent overcharge claims, there are still issues which need to be resolved, including the issue of willfulness and treble damages. Once there has been a final determination as to all issues, the Court will revisit the issue of attorneys' fees.

Accordingly, it is hereby,

ORDERED that Defendant's cross-motion for summary judgment is granted, and the causes of action asserted by Plaintiffs Joshua Frankel, Rachel Berger, Rena Dashiff, Scott Schreiber, Jessica Schreiber, Michael Stein, Lizabeth Baskin, Ariel Ennis, Miriam Cooper, Eliane Dreyfuss, Jacob Snir, Joel Golombeck, Roi Kliper, Naftali Cohen, and Shanie Korabelnik, are hereby dismissed; and it is further

ORDERED, ADJUDGED, AND DECLARED that Apartments 1F, 3H, 3J, 4M, 1S, 1A, 1P, 3L, 3M, 4J, and 6A located at 435 Central Park West, New York, New York are not subject to New York's rent stabilization laws by virtue of luxury deregulation; and it is further

ORDERED that the branch of Plaintiffs' motion for summary judgment on its first cause of action seeking declaratory judgment that the apartments of Nicole Iglicki, Elliot Iglicki, Rafael Marinelli, Urijah Kaplan, Mordechai Greenspan, Ilan Schwed, Amanda Shafran, Jonathan Stokar, Chavie Lieber, Joshua Glazer, Katherine Ashman, Shay Shaul, Shira Gidding, Scott Raveed, Judy Dick, and Sarah Kohn are subject to New York's rent stabilization laws is granted, and it is further

ADJUDGED, and DECLARED that Apartments 1B, 2B, 2N, 3A, 3B, 3F, 3N, 3O, 3T, 5P, 6F, 6M located at 435 Central Park West, New York, New York are subject to New York's rent stabilization laws, and the legal regulated rent of each Apartment is that reserved in each lease on the base date of February 28, 2015 combined with allowable renewal and vacancy increases through the date of this Decision and Order; and it is further

ORDERED that pursuant to CPLR § 3212(b), Plaintiffs Rafael Marinelli and Katherine Ashman's remaining causes of action alleging rent overcharge and seeking treble damages are dismissed; and it is further

ORDERED that Plaintiffs Joshua Frankel and Rachel Berger[8], Nicole and Elliot Iglicki, Urijah Kaplan, Mordechai Greenspan, Ilan Schwed, Amanda Shafran, Jonathan Stokar, Chavie Lieber, Joshua Glazar, Shay Shaul, Shira Gidding, Scott Raveed, and Judy Dick are granted summary judgment as to liability on their first cause of action alleging rent overcharge[9], and the remainder of their motion for summary judgment is otherwise denied; and it is further

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[8] As it relates to their tenancy in Apartment 2B only.
[9] Damages on the first cause of action are to be determined after the issue of willfulness is resolved.

ORDERED that Plaintiff Sarah Kohn's motion for summary judgment regarding rent overcharge and treble damages is denied; and it is further

ORDERED that all remaining Plaintiffs' motion for summary judgment on their fourth cause of action seeking attorneys' fees is denied as premature, with leave to renew; and it is further

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

(1) the issue of whether Defendant's overcharge of the remaining Plaintiffs was willful and requires issuance of treble damages;

(2) the issue of the total amount of damages, if any, owed to each of the remaining Plaintiffs on their overcharge claims when provided a set off based on allowable a Rent Guidelines Board increases;

(3) the issue of damages owed to Plaintiff Kohn for rent overcharges when set off by arrears allegedly owed and set off by allowable a Rent Guidelines Board increases; 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 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), 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 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 Plaintiffs shall serve a proposed accounting of overcharges due and/or pre-hearing memorandum within 24 days from the date of this order and the defendant shall serve objections to the proposed accounting and/or pre-hearing within 20 days from service of Plaintiffs' papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; 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 unless otherwise instructed by the assigned JHO/Special Referee; 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; and it is further

ORDERED that within ten days of entry, either party shall serve a copy of this Decision and Order, with notice of entry, on the other parties; 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.

5/23/2023
DATE

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

CHECK ONE:	[ ]	CASE DISPOSED		[x]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ] DENIED	[x]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[x] REFERENCE