

**Stuyvesant Owners Inc. v Frantino**

2023 NY Slip Op 34383(U)

November 13, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. 69960/2018

Judge: Jack Stoller

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R

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STUYVESANT OWNERS INC.,

Petitioner,

Index No. 69960/2018

- against -

**DECISION/ORDER**

JOANNE FRANTINO and MICHELE DOYLE,

Respondents.

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Present: Hon. Jack Stoller  
Judge, Housing Court

Stuyvesant Owners Inc., the petitioner in this proceeding (“Petitioner”), commenced this summary proceeding against Michele Doyle (“Respondent”), a respondent in this proceeding, and Joann Frantino, another respondent in this proceeding (“Co-Respondent”), originally as a nonpayment proceeding. Petitioner and Respondent stipulated to litigate the issue of Respondent’s claim to succeed to the tenancy of Angelo Sciabica (“the Prior Tenant”) at 333 East 14<sup>th</sup> Street, Apt. 4E, New York, New York (“the subject premises”). The Court appointed a guardian ad litem (“GAL”) for Respondent. The Court held a trial of this matter on March 1, 2023, March 2, 2023, June 14, 2023, and September 5, 2023 and adjourned the matter for post-trial submissions to October 24, 2023.

**The trial record**

The parties stipulated that Petitioner is the proper to commence this proceeding; that the Prior Tenant was the rent-stabilized tenant of record of the subject premises; that the Prior Tenant died, leaving Respondent in possession of the subject premises; that appropriate predicate notices were served; that Respondent remained in the subject premises thereafter; and that Respondent and the Prior Tenant co-resided with one another in the two years prior to the Prior

Tenant's passing.

Petitioner submitted into evidence the Prior Tenant's death certificate, which states that he died on November 6, 2017 and that the informant was Charles Sciabica ("the Prior Tenant's Nephew"). Petitioner submitted into evidence the Prior Tenant's will, dated October 26, 1982 ("the Will"). The Will bequeaths the Prior Tenant's estate to the Prior Tenant's Nephew, the Prior Tenant's sister Josephine Orsa ("the Prior Tenant's Sister"), and the Prior Tenant's other sister, Margaret Frantino ("Co-Respondent's Mother"), with the remainder to his nieces and nephews Co-Respondent, Maria Frantino ("Co-Respondent's Sister"), and Christopher Sciabica ("the Prior Tenant's Nephew's Brother") and Regina Sciabica ("the Prior Tenant's Nephew's Sister"). Petitioner submitted into evidence the Prior Tenant's Nephew pro se petition to probate the Will. The Prior Tenant's Nephew did not plead that Respondent was a person or party who could have been a potential distributee.

In response to a notice to admit that Petitioner caused to be served on Respondent, Respondent admitted the following: that Respondent was not involved with the decision to transfer the Prior Tenant to hospice; that the Prior Tenant's family did not inform Respondent of the name of the hospice; that Respondent moved into the subject premises in 2010; that Respondent did not participate in Surrogate's Court litigation concerning the Prior Tenant; that Respondent does not have a bank account; that Respondent did not file taxes or have a driver's license in 2016 or 2017; that Respondent was not registered to vote; that Respondent and the Prior Tenant did not have a joint account; that Respondent accessed the Prior Tenant's money in accounts using the Prior Tenant's card with the Prior Tenant's permission; that Respondent claims she was promised money but only received a portion of the money; that Respondent was unaware of being a beneficiary of the Prior Tenant's life insurance or pension; that the Prior

Tenant went to the hospital in October or November of 2017; and that Respondent visited the Prior Tenant two days after the Prior Tenant was hospitalized.

Respondent submitted into evidence an award letter dated November 27, 2016 from the Social Security Administration stating that Respondent received Supplemental Security Income (“SSI”).

The Prior Tenant’s Nephew testified that he lives in New Jersey; that his father was the Prior Tenant’s brother, so the Prior Tenant was his uncle; that the Prior Tenant’s Nephew’s Father was in a relationship with a woman named Josephine, who was Respondent’s mother; that the Prior Tenant did not have any children; that Respondent is the Prior Tenant’s niece; that the Prior Tenant treated all of his nieces and nephews as his children; that he has known Respondent since Respondent was born; that he always treated Respondent as a cousin; that Respondent lived in Bayonne with Respondent’s parents until Respondent was four or five; that Respondent lived with Respondent’s father and they traveled; that Respondent lived out of state; that Respondent lived with “us” as a family; that Respondent would stay with them for periods of six months to a year; that Respondent lived in the subject premises with the Prior Tenant’s Nephew’s Father, her mother, and the Prior Tenant’s Nephew’s Brother; that his family occupied five apartments in the building in which the subject premises was located (“the Building”); that the Prior Tenant lived in the subject premises; that apartment 3H was occupied by his great uncle Charles Piscatello; that Co-Respondent, Co-Respondent's Mother, and Co-Respondent's Sister lived in apartment 3A; that apartment 4E in the Building was occupied by his grandparents Salvatore and Josephine Sciabica; that the Prior Tenant and the Prior Tenant’s Nephew’s Sister lived there; that apartment 12C was occupied by the Prior Tenant’s Sister and his uncle; that she treated him like a boyfriend; that his mother was not living with them because they were separated; that

Respondent lived in the subject premises for a while; that Michael Doyle, Respondent's brother, usurped the subject premises; that the Building paid him \$20,000 to move; that Respondent then moved to New Jersey; that Respondent was the niece to his aunts and the granddaughter to his grandmother; that Respondent was more like a sister to him than a cousin because their parents were so close; that the Prior Tenant's Sister was Respondent's godmother; that when the Prior Tenant's Sister got sick Respondent took care of her; that on Sundays they all ate dinner together; that when his grandmother was alive they all ate at her apartment; that Respondent was treated no differently from him; that Respondent had a good relationship with Co-Respondent's Mother; that Respondent would hang out with them; that Respondent's middle name is "Margaret"; that Respondent's relationship with the Prior Tenant's Nephew's Brother was like brother and sister; that they lived together for fifteen years; that they would watch TV together; that they would make him stay and watch TV together; that the Prior Tenant's Nephew's Brother lived there until he passed away; that Respondent had come back sometime during the holidays; that Respondent came back for a little while before staying for the fifteen-year period; that they had the holidays together; that they would go on vacations together upstate; that Respondent is a little slow about things; that Respondent has a learning disability; that his daughter is a special needs instructor; that when you talk to Respondent you have to repeat the same things; that Respondent can remember events but she is terrible at details; that after Respondent left apartment 3N, she moved back to the Building about twenty years ago, to the subject premises, with Respondent; that he was with Respondent and the Prior Tenant all the time; that the Prior Tenant was dependent on him for many things; that he came to the subject premises four days a week; that they had lunch and dinner together and they would watch TV; that he would tease the Prior Tenant, saying that the Prior Tenant was keeping him captive there; that Respondent came

to his house; that as they got older and he had children they started having family functions at his house on holidays; that Respondent and the Prior Tenant's relationship was like a father-daughter relationship; that the Prior Tenant used to give her an allowance; that Respondent took the Prior Tenant to the doctors and visited him at the hospital; that Respondent went out walking with the Prior Tenant; that the Prior Tenant fell down two years before the Prior Tenant died and Respondent called EMS; that she did that on a prior occasion; that the Prior Tenant said that Respondent probably saved his life; that they went out to eat all the time; that the Prior Tenant bought him a car when he was an adult; that the Prior Tenant was very generous; that the Prior Tenant called Respondent his niece; that the Prior Tenant discussed finances with him; that he is an accountant; that he did the Prior Tenant's taxes; that the Prior Tenant purchased annuities; that when his aunts died he helped the Prior Tenant restructure the beneficiaries from the two people who were alive; that if the Prior Tenant wanted to do something financially he asked him for advice; that the Prior Tenant said that Petitioner did not fix things in the subject premises; that Respondent did not pay the Prior Tenant rent; that Respondent did not contribute expenses; that Respondent gave the Prior Tenant some money, but she took it back; that the Prior Tenant would give Respondent money on a daily basis because she was not a great manager of money; that the Prior Tenant said that Respondent was terrible with money; that the Prior Tenant said that Respondent would be broke by the tenth of the month after Respondent got her SSI check; that because Respondent was so bad with money he would not leave the Prior Tenant money in the will and because she was on SSI the government would just take the money; that the Prior Tenant instructed the family to give Respondent money informally; that Respondent cleaned the house and took care of him; that Respondent was a companion for the Prior Tenant; that the Prior Tenant had esophageal cancer; that Respondent assisted the Prior Tenant with things that he

needed to get things done; that after the Prior Tenant broke his bone in a hip, the Prior Tenant would exercise in the hallway; that Respondent would do physical therapy with him and walk back and forth with the Prior Tenant in the common area hallway; that the Prior Tenant made his own health care decisions until the Prior Tenant went into hospice; that the Prior Tenant then appointed him attorney-in-fact; that the Prior Tenant wanted him to get input from other nieces and nephews in decisions; that Respondent was there when decisions were made; that the Prior Tenant was taken to the hospital when he broke his hip and he went into rehab; that he visited the Prior Tenant in the hospital all the time; that they all visited him; that he does not know the frequency with which the Prior Tenant was in the hospital; that the Prior Tenant was in rehab for three months; that that is when they did physical therapy in the hallway; that as the cancer precluded the Prior Tenant from eating solid food; that pasta was his favorite food; that the Prior Tenant died at Calvary Hospice; that they all decided that the Prior Tenant would go to hospice from the hospital; that they all visited the Prior Tenant in hospice; that he knows that Respondent visited once; that the Prior Tenant was in hospice for nine days; that the Prior Tenant's Nephew's Brother died on March 1, 2018; that the Prior Tenant's funeral was at Immaculate Conception; that Respondent was there; that Respondent rode in the family limousine with everyone; that there was something that the Prior Tenant wrote; that the Prior Tenant gathered all of his nieces and nephews to state his intentions three or four months before the Prior Tenant died; that the money in his main account should be divided evenly between his nieces and nephews; that the Prior Tenant wanted to leave Respondent ten or twenty thousand dollars; that Respondent received something to that effect; that the Prior Tenant gave him instructions separately to give Respondent money; that he looked for this writing; that Co-Respondent took that document; that he does not know that Co-Respondent took that; that there was no conflict about the will among

the family; that he filed the will with Surrogate's Court; that the Prior Tenant only had a joint account and it was to transfer upon death to Co-Respondent; that Co-Respondent gave him and his siblings a gift of \$75,000 and not from the estate because of tax purposes; that Co-Respondent then stopped talking to everybody; that he gave Respondent money on a regular basis because the Prior Tenant wanted that; that the Prior Tenant told him that the Prior Tenant wanted Respondent to be taken care of; that the Prior Tenant had annuities that had life insurance benefits; that the Prior Tenant had the Prior Tenant's sisters as beneficiaries; that he had the Prior Tenant change the beneficiaries to nieces and nephews other than Respondent; that the Prior Tenant worked for the post office, so the Prior Tenant did not get Social Security; that there was a small amount that would be a benefit from the pension; that Co-Respondent dealt with that in Surrogate's Court; that they all got a few hundred dollars; that the Prior Tenant and he were always very close; that they got closer when his father died; that the Prior Tenant always treated him like a son; that the Prior Tenant taught him how to drive; that the Prior Tenant was not as close with all the cousins; that Co-Respondent was the only other person the Prior Tenant was close with; that the Prior Tenant was close with his sister; that the Prior Tenant was close with the Prior Tenant's Nephew's Brother, who had medical issues; that the Prior Tenant was emotionally just as close with other people; that the Prior Tenant took the Prior Tenant's Nephew's Brother in when he was twenty-five years old; that the Prior Tenant was close with Respondent but the Prior Tenant was a man's man; that the Prior Tenant treated Respondent like the Prior Tenant treated all of them; and that the Prior Tenant gave Respondent an allowance for fifteen years.

Respondent submitted into evidence a bond questionnaire signed by the Prior Tenant, which lists Respondent is listed as a reference as a niece. The Prior Tenant's Nephew testified

that the Prior Tenant always referred to Respondent as a niece; that him being the favorite did not mean that the Prior Tenant loved the other cousins any less; that the Prior Tenant gave Respondent a place to live; that he sees Respondent all the time; that he talks to Respondent four or five times a week; that Respondent comes to his house a couple of times a month, spending one or two days a month there; that he sees Respondent a few times a month; that Respondent is like his sister; that he helps Respondent out when she can; and that Respondent is at family functions with him.

Respondent submitted into evidence a photograph of Respondent and the Prior Tenant's Nephew's Sister dancing at the Prior Tenant's Nephew's son's wedding. The Prior Tenant's Nephew testified that his son was married on October 12, 2019; that Respondent was always invited to every family function; that he testified today because it is the right thing to do; that Respondent needs help; that Respondent is like a sister to him; that the Prior Tenant treated Respondent like a daughter; that the Prior Tenant bought Respondent things; and that Respondent lived with him for twenty years.

The Prior Tenant's Nephew testified on cross-examination that he did not really talk about his testimony with anyone; that he understands that Respondent is looking to prove that she is a relative and she wants to be a tenant of the subject premises; that he wants Respondent to be a tenant of the subject premises; that Respondent is not related to the Prior Tenant by blood; that he never lived in the subject premises; that he lived with Respondent and the Prior Tenant, but not together; that Respondent moved back to New York about fifteen years ago; that it is not correct that Respondent moved into the subject premises in 2011; that he believed that Respondent had been previously living in Delaware and Colorado; that Respondent had a close relationship with the Prior Tenant's Nephew's Brother; that Respondent did not have a closer

relationship with the Prior Tenant's Nephew's Brother than the Prior Tenant; that their relationship was equal; that the Prior Tenant's Nephew's Brother was also living with Respondent while Respondent and the Prior Tenant were living there; that he would take care of the Prior Tenant's financial matters; that the Prior Tenant was a great procrastinator, so he would help the Prior Tenant getting things going; that he would take the Prior Tenant to the doctor, rotating with other family members; that the Prior Tenant's Nephew's Brother, Respondent, Co-Respondent, the Prior Tenant's Nephew's Sister, and once in a blue moon Co-Respondent's Sister, his cousin, would take the Prior Tenant to medical appointments; that the Prior Tenant's Nephew's Sister and Co-Respondent's Sister did not help as much as the others; that the bulk of the help was between the Prior Tenant's Nephew's Brother and Respondent; that the Prior Tenant ate at the apartment of the Prior Tenant's Sister and Co-Respondent's Mother; that most of the time the Prior Tenant would eat out; that the Prior Tenant would eat breakfast and lunch in the subject premises; that in the last three years of his life he ate dinner eighty percent of the time in the subject premises from take-out; that the Prior Tenant's Nephew's Brother helped the Prior Tenant with cleaning sometimes; that the Prior Tenant's Nephew's Brother took the Prior Tenant to medical appointments and kept the Prior Tenant company; that the Prior Tenant's Nephew's Brother had drug problems so the Prior Tenant's Nephew's Brother was not around a lot of times; that the Prior Tenant's Nephew's Brother had a heart condition and was weak a lot of the time; that Co-Respondent mostly visited the Prior Tenant and bought the Prior Tenant lottery tickets and occasionally took the Prior Tenant to the doctor; that the Prior Tenant loved having company; that Co-Respondent made the Prior Tenant the happiest of all; that the Prior Tenant gave money to the Prior Tenant's Nephew's Sister to help her with credit card debt; that he would not give the Prior Tenant's Nephew's Brother large sums of money because of his drug

problem; that the Prior Tenant was an independent person; that the Prior Tenant took care of his health and did not give him a health care proxy until the last visit to the hospital; that the Prior Tenant was cognitively sharp throughout his life; that the Prior Tenant was smart and wise; that he is in accounting; that he always did the Prior Tenant's taxes and worked on the Prior Tenant's finances in the last seven or eight years of his life; that the Prior Tenant had money set aside in an IRA and brokerage account; that the Prior Tenant worked for the postal service and received a pension of about \$36,000 a year; that the Prior Tenant invested well through an advisor; that the Prior Tenant asked him to be on the account with the Prior Tenant; that he declined it, suggesting Co-Respondent because he was taking care of his family members because he did not want the same kind of aggravation he experienced when his mother died; that the Prior Tenant had accounts with Citibank, Wells Fargo, and some savings bonds; that the Prior Tenant opened an account with Co-Respondent's name on it around 2010; that he is the executor of the Prior Tenant's estate; that his sisters who died had been the beneficiaries on the Prior Tenant's account; that the Prior Tenant's Nephew's Sister, the Prior Tenant's Nephew's Brother, Co-Respondent, and he were the equal beneficiaries of the accounts after the Prior Tenant's sisters died; that he is the one who made the decision about changing the beneficiaries; that the Prior Tenant went along with that; that this occurred about two years before the Prior Tenant died; that Respondent could not be included because of her circumstance with SSI; that the Prior Tenant drafted his will in 1982; that the Prior Tenant named five nieces and nephews as beneficiaries at that time; that in 1982 the Prior Tenant knew Respondent; that the Prior Tenant did not name Respondent because he was taking care of Respondent's mother; that there was maybe \$1,000 in the estate when the Prior Tenant died; that when the Prior Tenant died the money in the Transfer On Death ("TOD") went to Co-Respondent automatically without probate; that the only money

in the estate the he was aware of was the savings bonds which Co-Respondent cashed and which he thought Co-Respondent should have distributed; that he had an account with Co-Respondent that contained all of the Prior Tenant's money; that he knew that the account had a right of survivorship; that the Prior Tenant never changed the account; that they agreed that it would be under Co-Respondent's name; that the Prior Tenant knew that it would be under Co-Respondent's name; that there was more than \$300,000 in the account; that he and Co-Respondent were the only two people who knew about the Prior Tenant's assets; that the Prior Tenant spoke to all of them in a group about the Prior Tenant's wishes; that the Prior Tenant explained that he wanted the proceeds of the TOD account split equally between the nieces and nephews five ways and that they should also help Respondent; that the Prior Tenant wanted to have Respondent get \$20,000, not in a lump sum, which was far less than the other nieces and nephews, with a stipulation that they should help her; that they did not want to leave money to Respondent because she was on SSI, which also got her medical benefits; that the Prior Tenant knew that a lump sum could endanger SSI benefits because he is the one who told the Prior Tenant about that; that there was no way he knew of to leave money to Respondent without endangering SSI benefits; that the Prior Tenant had a financial advisor just for a Wells Fargo account, not a personal account; that he knew about the effects on SSI because he had an aunt and an uncle on his mother's wife on his wife's side and this came up when they talked about his mother passing; that his mother wanted to leave money to her sisters and the attorney said that you could not leave money to them because they would lose their SSI benefits; that the attorney who said this never talked about a special needs trust; that he never became aware of something like a special needs trust; that he is not a specialist in distribution from estates; that Respondent has been at Christmas and Thanksgiving dinners for many years; that family functions were not

in Respondent's Mother's apartment; that they ate out on family functions if they were in New York; that they went to Lanza's on First Avenue and Eleventh Street; that family functions would most likely be in his house or his daughter's house; that the subject premises was not big enough to host fifteen people; that all the nieces and nephews were all invited; that Co-Respondent's Sister and her husband and their daughter did not come to Thanksgiving because they were with her husband's family; that they would go to the subject premises before going to Lanza's; that some people met them at Lanza's; that he has known Respondent since she was born; that he invited Respondent because it had been established because she is part of the Prior Tenant's family; that if the Prior Tenant was coming, then Respondent would be coming just like with other members of the extended family; that he considers Respondent to be like a step-sister; that this relationship was originally with his father and his father's girlfriend, who was Respondent's mother; that after the Prior Tenant died, he and Co-Respondent had a disagreement about the disbursement of the money; and that Co-Respondent was not following the Prior Tenant's instructions.

The Prior Tenant's Nephew testified on redirect examination that they would often have dinner in the subject premises; that they had dinner ninety percent of the time by take-out or Respondent would occasionally cook; that the Prior Tenant gave Respondent money every day starting around the seventh or the tenth of the month; that he continued to take care of Respondent partly because of the Prior Tenant's wishes and partly because Respondent is family; and that the Prior Tenant was closer with Respondent after his father died because his uncle took over paying the rent for the apartment and then after Respondent's mother the Prior Tenant continued paying after Respondent left.

Respondent testified that her primary source of income is SSI; that she suffers from

bipolar disorder and has slow comprehension; that she has to reapply for SSI; that she was in the hospital for a long time; that she does not remember things well, like dates; that taking medication helps her; that medication slows her down; that her disability affects her ability to answer questions; that she was on medication for her mental health on the day of her testimony; that she was not on medication at her deposition; that she has lived at the subject premises for about fourteen or fifteen years; that she knew the Prior Tenant all her life; that Josephine is the Prior Tenant's mother; that she was born in Queens; that the Prior Tenant's family knew her mother since she was born; and that her mother's name was "Josephine Manniscalco".

Respondent submitted into evidence Respondent's birth certificate, which corroborated that.

Respondent testified that her mother was working in Manhattan and the Sciabica family met her mother in the early 1960s or the 1950s; that they knew her mother; that her mother was the girlfriend of Frank Sciabica, who was the Prior Tenant's brother ("the Prior Tenant's Brother"); that she lived with the Prior Tenant's Brother at some point when she was eighteen or twenty years old in apartment 3N at the Building; that she and her mother lived there with the Prior Tenant's Brother; that her mother and the Prior Tenant's Brother are deceased; and that her mother died in 1982.

Respondent submitted into evidence photographs of her mother's gravesite. The headstone says, "Sciabica" and under that, it says "Josephine Maniscalco". Respondent testified that Respondent's mother is buried in the Bronx near other members of the Prior Tenant's family; that after Respondent's mother died Respondent continued to live in the Building; that she then moved out of New York; that after she moved she continued to visit the Prior Tenant; that she stayed with the Prior Tenant when she visited; that she moved back and moved in with the Prior Tenant; that she moved back because she wanted to be with the only family she ever

had; that the Prior Tenant's Nephew's Sister and Co-Respondent's Mother had breast cancer at the time; and that Co-Respondent's Mother is her aunt.

Respondent submitted into evidence photographs of Respondent with the Prior Tenant's Nephew's Sister at Co-Respondent's Sister's house; or Respondent with Co-Respondent's Mother and at Co-Respondent's Mother's house; Respondent with Co-Respondent's Mother and the Prior Tenant's Nephew's Brother, and of Respondent, her godmother, the Prior Tenant's Sister, and Co-Respondent's Sister, who Respondent identified as her cousin. Respondent submitted into evidence a photograph of her when she was six years old, with Co-Respondent, among other people, in an apartment on 12<sup>th</sup> floor of the Building. Respondent testified that Margie is the Prior Tenant's sister; that she would always go to the Prior Tenant's Sister for advice; that they were close; that they did a lot of things together; that they went out for coffee and went to Veneiro's; that they went to shows and movie theaters and parks; that Co-Respondent's Mother listened and gave her advice; and that Co-Respondent's Mother would give her something if she also gave something to her daughters, Co-Respondent and Co-Respondent's Sister. Respondent submitted into evidence a photograph of her and Co-Respondent's Mother in Co-Respondent's Mother's apartment taken in 2011. Respondent testified that this photograph was taken when Co-Respondent's Mother was dying; that when Co-Respondent could not digest things she cleaned her up; that she walked with Co-Respondent's Mother and fed her and took care of her; that Co-Respondent's Mother did everything for her; that Co-Respondent's Mother supported her in every kind of way; that the Prior Tenant's Sister, her godmother, would tell her war stories; that the Prior Tenant's Sister would ask for Respondent; and that she helped the Prior Tenant's Nephew's Sister with anything that she wanted.

Respondent submitted evidence of her baptism, which shows John Oresta is her godfather and the Prior Tenant's Sister as her godmother. Respondent testified that Co-Respondent's Mother had the original; that Co-Respondent's Mother made a copy for her; that her aunt, the Prior Tenant's Sister, loved her; that they were friends as well as a godmother or an aunt; that they went to plays and ballets together; that she cleaned the house for the Prior Tenant's Sister; that she cooked for her; that the Prior Tenant's Sister had cancer; that she helped the Prior Tenant's Sister the same way that she helped Co-Respondent's Mother; that the Prior Tenant's Nephew's Brother and she are about the same age; that they loved to watch movies; that the Prior Tenant did not watch a TV in the bedroom; that the Prior Tenant went to bed at midnight; that she and the Prior Tenant's Nephew's Brother would watch TV until two or three a.m.; that she advised the Prior Tenant's Nephew's Brother to go to the hospital because he had an issue with his heart; that she called an ambulance; that she attended family functions, such as Easter and Christmas; that she went to Lake George with the Prior Tenant's Sister, Co-Respondent's Mother, Co-Respondent, Co-Respondent's Sister, the Prior Tenant's Nephew, "Grandma", and "Grandpa"; that the Prior Tenant would come too; that she attended family functions before and after the Prior Tenant died, like the wedding of her second cousin; that the Prior Tenant's Nephew's Sister and the Prior Tenant's Nephew were there; that the Prior Tenant's Nephew's mother's sisters were there; that she danced with the Prior Tenant's Nephew's Sister; and that she exchanged cards and gifts with the family.

Respondent submitted into evidence a Christmas card from Co-Respondent; an Easter card from the Prior Tenant's Nephew's Sister; a photograph the Prior Tenant, who she considered to be her father, the Prior Tenant's Nephew's Sister, and Co-Respondent, who she considered to be her cousins, and someone named Kayla ("Co-Respondent's Sister's Daughter"),

who Respondent testified Co-Respondent's Sister adopted. Respondent testified that Respondent's mother had a brother/sister relationship with the Prior Tenant and that they got along like family. Respondent submitted into evidence photographs of her mother and the Prior Tenant and her cousin. Respondent testified that her mother and the Prior Tenant's family clicked; that they took her in and they loved her; and that the Prior Tenant never got married or had any children.

Respondent submitted into evidence photographs of her and the Prior Tenant hugging each other, of her, the Prior Tenant, and the Prior Tenant's Sister when Respondent was coming from Colorado to New York, at JFK Airport, of Co-Respondent's Mother, her, and the Prior Tenant and Co-Respondent's Mother's apartment, and of the Prior Tenant at a barbecue at Co-Respondent's house. Respondent testified that she and the Prior Tenant were at Co-Respondent's house; and that Co-Respondent was Respondent's mother's best friend. Respondent submitted into evidence photographs of the Prior Tenant and her in the subject premises; her and the Prior Tenant at a cathedral, of her and the Prior Tenant separately at a visit at Rockefeller Centre, and of the Prior Tenant, her, Co-Respondent's Mother, Co-Respondent's Sister, Co-Respondent's Sister's Daughter, "Frances", who Respondent testified was the Prior Tenant's Brother's ex-wife, and the Prior Tenant's Sister.

Respondent testified that the Prior Tenant paid rent and other bills; that the Prior Tenant did not ask her to pay rent; that the subject premises is a one-bedroom apartment; that the Prior Tenant had a bed by the window; that the Prior Tenant's Nephew's Brother slept on a sofa bed in the living room; that she and the Prior Tenant's Nephew's Brother alternated once in a while and she would sleep in the bedroom; that the bedroom had two beds; that the Prior Tenant gave her a spot in drawers for her clothes; that the Prior Tenant's clothes were in the living room in an

armoire; that she got the Prior Tenant's medicine; that she went to doctors with the Prior Tenant; that she went grocery-shopping for the subject premises; that the Prior Tenant gave her or the Prior Tenant's Nephew's Brother his card or cash; that she would ask the Prior Tenant for money if she needed it; that she would not ask her biological father for money; and that she would ask the Prior Tenant for five dollars every day. Respondent submitted into evidence checks from the Prior Tenant payable to Respondent.

Respondent testified that she needed help; that the Prior Tenant would send her money while she was living in Colorado; that the whole family commented to her about her spending, saying that she was careless, calling her a shopaholic; that she liked rings; that she gave the Prior Tenant money every month; that the Prior Tenant would save the money; that the Prior Tenant would give the money back to her; that the Prior Tenant would not use the money for household expenses; that they ate together every day in restaurants; that the Prior Tenant's favorite restaurant was Louise on 14<sup>th</sup> Street and Joe's pizza; that the Prior Tenant loved pasta; that the Prior Tenant would pay when they went out together; that she would cook for the Prior Tenant and the Prior Tenant's Nephew's Brother; that she would buy the groceries for cooking; that the Prior Tenant loved mustard greens and collard greens; that she and the Prior Tenant went to the movies together; that Co-Respondent's Sister, her cousin, in New Jersey and Co-Respondent and the Prior Tenant's Nephew and the Pascatellis on the father's side would go to Lake George together; that they celebrated Christmas and weddings together; that she and the Prior Tenant would exchange gifts; that the Prior Tenant's health was good but it deteriorated; that he fell and she called for an ambulance; that she was at the hospital with him; that the Prior Tenant said, "[Respondent] saved my life, I could have died"; and that she took the Prior Tenant to doctor's appointments. Respondent submitted into evidence a note from the Prior Tenant, referring to

Respondent as “my niece” and stating that Respondent would be escorting him to a doctor’s appointment.

Respondent testified that the Prior Tenant died of throat cancer; that he was in the hospital before he was in hospice; that she called the Prior Tenant in hospice; that she went to the Prior Tenant’s funeral; that the family went there in a vehicle; that she rode with the Prior Tenant’s Nephew and the Prior Tenant’s Nephew’s Sister; that the Prior Tenant gave her \$20,000; that the Prior Tenant wrote it out in the kitchen on the tablecloth; that Co-Respondent got it and so she does not have it; that she got money but not all of it; that Co-Respondent gave her money every month; that she saw the Prior Tenant’s Nephew every other week after the Prior Tenant died; that she saw the Prior Tenant’s Nephew’s Sister after the Prior Tenant died; that she saw Co-Respondent’s Sister after the Prior Tenant died; that she saw the Prior Tenant’s Nephew’s children two or three months after the Prior Tenant died; that she could not go out there because she was in the hospital a lot; that she would see them on holidays; that she went when she was feeling good; and that she attended family events after the Prior Tenant died. Respondent submitted into evidence an invitation to the Prior Tenant’s Nephew’s son’s wedding and a note referring to her as a “cousin” and stating that there were great shots of Respondent dancing with the Prior Tenant’s Nephew’s Sister.

Respondent testified that the Prior Tenant’s family are family to her; that the Prior Tenant took the place of her father; that the Prior Tenant supported her; and that she misses the Prior Tenant.

Respondent testified on cross-examination that she is not related to the Prior Tenant by blood or marriage; that she does not remember the date that the Prior Tenant died; that she has a lot on her mind; that she is trying to deal with it in the best way she can; that she is aware that the

Prior Tenant died an Cavalry Hospital; that the Prior Tenant was at NYU first; that she thinks the Prior Tenant went to NYU in an ambulance; that she testified at the deposition that the Prior Tenant's Nephew's Sister went with the Prior Tenant; that she did not visit the Prior Tenant for two days after he went to the hospital; that she was not involved with the decision to transfer the Prior Tenant to Cavalry; that none of the family members informed Respondent that the Prior Tenant was transferred to Cavalry; that she called the Prior Tenant at Cavalry but she did not visit him; that she was not in the Will; that the Prior Tenant's beneficiaries were nieces and nephews of the Prior Tenant; that the Will was written in 1982; that the Prior Tenant knew Respondent in 1982; that she moved into the subject premises in 2010; that the Prior Tenant did not include the Will thereafter; that no one consulted with an attorney about the effect of a bequest on her SSI benefits; that she was not involved in the Surrogate's Court proceeding; that each of the Prior Tenant's nieces and nephews received money; that she did not share bank accounts with the Prior Tenant; that she did not have access to the Prior Tenant's bank accounts or credit cards; that she did not know how much money the Prior Tenant had at the time of his death; that the Prior Tenant was going to give her \$25,000; that there were four nieces and nephews; that she is not the beneficiary of the Prior Tenant's life insurance; that she is not a beneficiary of the Prior Tenant's pension from his employment with the U.S. Postal Service; that she is not a beneficiary of the Prior Tenant's Social Security death benefits; that she did not inform the Social Security Administration of the Prior Tenant's death; that there something in writing saying that she was supposed to get help from the Prior Tenant; that she has not produced that note; that she got \$890-something per month in SSI at the time of the Prior Tenant's passing; that she had a bank account that she deposited the SSI benefits into; that she does not now have a bank account; that she let the Prior Tenant hold her money; that the Prior Tenant held her SSI

benefits for her; that she was not the Prior Tenant's health care proxy; that she was not the account holder for utilities at the subject premises; that she the Prior Tenant did not host family activities; that family members and friends attended family functions; that she did not engage in activities alone with the Prior Tenant; that the Prior Tenant said to other people that Respondent was like a daughter or a niece to him; that the Prior Tenant's Sister died in 2014; that the Prior Tenant had relied upon his sister to assist him; that the Prior Tenant did not rely on his nieces and nephews; that the Prior Tenant relied on a number of people; that the Prior Tenant's Nephew's Sister assisted with medical issues; and that Co-Respondent assisted with financial issues.

Respondent testified on redirect examination that she was taking care of the family, in particular, the Prior Tenant's Nephew's Brother, who had a bad heart; that the Prior Tenant's Nephew's Brother died three or four months after the Prior Tenant died; that she was close to the Prior Tenant in 1982 and indeed her whole life, closer in 1982 than in 2010; that she experiences anxiety and a lack of comprehension of a lot of things; that she can remember when she was younger in the past but she does not remember dates; that the Prior Tenant said that he left her \$25,000; that Co-Respondent knew about it and Co-Respondent would take care of her; that everyone had the key to everyone's apartment; that Co-Respondent went to the subject premises to get the letter; that other members of the family did not know about that; that everyone knows that she is not good with money; that the Prior Tenant did not trust her with large amounts of money; that the Prior Tenant gave Respondent his credit card at times; that the Prior Tenant gave her money every day; that she never did anything along with the Prior Tenant; that they were with family; that they went to the movies alone a couple of times but not all the time; that the Prior Tenant knew that Respondent was there for him before he died; and that the Prior Tenant

would ask to go to the store to get his medicine.

The Prior Tenant's Nephew's Sister testified that she lives in Staten Island; that she was born in the house with the Prior Tenant; that the Prior Tenant's brother was her father; that they all lived together until they got married; that she knew Respondent's mother and father from when she was 13 years old; that they all lived in the same building on 14<sup>th</sup> Street at that time; that she knew Respondent's mother and Respondent's father Ralph; that Respondent's Mother lived in apartment 3N at the Building with her father; that Respondent called her mother "Grandma" and they had no place to live; that they have called Respondent "cousin" since she was born, because Respondent has been with them; that they would spend time together; that they spent every holiday together; that Respondent was living with the Prior Tenant; that the Prior Tenant was brothers with her father and three other siblings; that her family continued to spend time with Respondent after Respondent's mother died; that her family buried Respondent's mother; that the Prior Tenant had a big heart; that she was in the room when the Prior Tenant was in hospice; that Respondent would clean the Prior Tenant when he had esophageal cancer; that Respondent had problems with either remembering or paying attention; that when she needed surgery on her foot, Respondent came to take care of her; that the Prior Tenant raised her; that the Prior Tenant offered to pay for her wedding; that the Prior Tenant walked her down the aisle; that she lived with the Prior Tenant; that the Prior Tenant never asked her for a dime; that she lived there until she got married; that they all lived in one apartment; that Respondent had to have been living in the subject premises since the early 2000s; that Respondent was back and forth from the subject premises to Colorado; that Respondent came back and she just stayed; that the Prior Tenant could not live with himself; that the Prior Tenant took care of Respondent's mother; that the Prior Tenant put a roof over her head and food on her table and he never asked

Respondent for money; that she was there all the time especially when the Prior Tenant was sick; that she would go in three or four days a week; that they were always together; that she would see family members including an uncle and a sibling and Respondent; that Respondent was always there; that the Prior Tenant loved to go out to eat; that they did that ninety percent of the time; that the Prior Tenant would treat them; that the Prior Tenant never asked anyone for money; that Respondent helped the Prior Tenant; that the Respondent would wash him and clean him; that she could not do that; that Respondent's father was the worst father on earth; that the Prior Tenant died on November 6, 2017 at a hospice in the Bronx; that she was home when the Prior Tenant went to the hospital; that Respondent was at the Prior Tenant's funeral mass and the Prior Tenant's burial by car that her brother ordered from the funeral home; that everything the nieces and nephews did, Respondent did; that she has seen Respondent a few times since the Prior Tenant died because she was sick with cancer; that she speaks to Respondent; that Respondent always goes to the home of the Prior Tenant's Nephew, who is her brother; that the Prior Tenant had a lot of money; that he left Respondent a certain amount of money; that Co-Respondent, the person in charge of doling out the money, jerked them around and lied to them; that they all trusted each other, which they should not have done; that she is testifying because Respondent needs her help and it is not fair what is being done to Respondent; that Respondent took care of the Prior Tenant; that the Prior Tenant referred to Respondent like the rest of them; that the Prior Tenant's heart went out to Respondent because Respondent's parents abandoned her; and that the Prior Tenant had a close sisterly relationship with Respondent's mother and made Respondent like family to the Prior Tenant.

The Prior Tenant's Nephew's Sister testified on cross-examination that she has lived in Staten Island since 1987; that she did not live in the subject premises from 2010 to 2017; that she

wants Respondent to keep the subject premises; that she would not say just anything to help Respondent; that the Prior Tenant thought of Respondent like one of the Prior Tenant's nieces and nephews; that the functions she testified about were attended by all other uncles and aunts and cousins as well; that Respondent was not with the Prior Tenant when the Prior Tenant died; that she does not know if Respondent visited the Prior Tenant at Cavalry Hospital; that she was only there on the day that the Prior Tenant died; that Respondent was getting less than the rest of the nieces and nephews; that the Prior Tenant helped out the Prior Tenant's Nephew's Brother; that the Prior Tenant was never married and did not have children of his own; and that her Respondent's Mother provided help to the Prior Tenant, like cooking for him and taking him to the hospital before she died.

The Prior Tenant's Nephew's Sister testified on redirect examination that the Prior Tenant's nieces and nephews meant the world to him.

Norma Del Franco ("Respondent's Mother's Friend") testified that she lives in Queens; that Respondent's mother was her best friend; that she knew Respondent's mother from the time that she was 21 until her passing at the age of 51; that she took care of the Prior Tenant's brother until he died; that she took care of the mother until the end as well; that Respondent called them "aunt" and "uncle" because they were like family; that the Prior Tenant never had children; that the Prior Tenant treated Respondent like a family member; that Respondent lived with the Prior Tenant; that she kept in touch with Respondent after Respondent's mother died; that their relationship was like family; that the Prior Tenant invited her to Manhattan and Respondent was there and they went out to eat in the neighborhood; that they referred to each other as "cousin"; that Respondent's father did not provide for her; that the Prior Tenant assumed the responsibility for Respondent's mother's death, such as paying for the plot; that Respondent would go to the

Prior Tenant if Respondent needed anything; that the Prior Tenant nurtured Respondent's needs; that the Prior Tenant took over being a father to a cousin also; that the Prior Tenant was a good loving human being; that Respondent cooked for the Prior Tenant; that the Prior Tenant and she would laugh about his complaint about the way Respondent prepared eggs; that Respondent did laundry and made beds because Respondent is very clean; that Respondent and the Prior Tenant spent Christmas, holidays, weddings, and funerals together; and that people who were blood relatives were not as close.

Respondent's Mother's Friend testified on cross-examination that she has lived in Queens since 1968 and that she was at the subject premises maybe five times between 2010 and 2017.

Mary Krapf ("the Prior Tenant's Friend") testified that she lives in Manhattan; that she moved to her address in 1981; that she had her son in 1982 and walked around the neighborhood; that she met the Prior Tenant out in the neighborhood; that they became friends; that she got to meet the Prior Tenant's Nephew's Brother; that she went to their house sometimes and hung out and watched TV; that she met Respondent because Respondent lived there; that she is old enough to be Respondent's mother; that they always had a crossword puzzle on the big table and Respondent and the Prior Tenant's Nephew's Brother would stand and do the puzzles; that the Prior Tenant was older than her; that the Prior Tenant would stay in his room but he would come out to eat; that Respondent would bring the Prior Tenant something to eat; that the Prior Tenant was the patriarch and Respondent and the Prior Tenant's Nephew's Brother were like his children or grandchildren, children of the Prior Tenant's brother; that he treated them as such; that they respected him and the Prior Tenant took care of Respondent and the Prior Tenant's Nephew's Brother; that Respondent never really had a job and the Prior Tenant paid the bills; that the Prior Tenant's Nephew's Brother worked in a restaurant; that the Prior Tenant was a

special guy; that the Prior Tenant was a single man; that the Prior Tenant treated other relatives like his children, but Respondent lived with him; that Respondent would bring the Prior Tenant his tea and Respondent was always puttering around cleaning something; that the place was always extremely neat, which was Respondent's doing, not the Prior Tenant's doing; that she went to the wake for the Prior Tenant and the funeral mass; that Respondent was at the funeral mass; that Respondent was with the family when they entered the funeral mass and they all sat together in the front while neighbors who attended the funeral sat in the back; that Respondent was lucky to have someone like the Prior Tenant to look after her; that the Prior Tenant's Nephew's Brother and Respondent were step-siblings; and that she is testifying because she does not think that Respondent should have to move.

The Prior Tenant's Friend testified on cross-examination that she knew the Prior Tenant's Nephew's Brother better; that Respondent and the Prior Tenant had a normal family life; that they were always doing food shopping; that they had dinner together; and that they experienced "family life, as it is".

The Prior Tenant's Friend testified on redirect examination that she saw Respondent and the Prior Tenant in a restaurant; that she saw the Prior Tenant yelling at her; that she saw Respondent trying to be a good grandchild; and that Respondent sometimes watched sports with the Prior Tenant.

Paul Brensilver ("the Property Manager") testified on rebuttal that he has worked at the Building for thirty years; that he knows the subject premises; that the Prior Tenant was the last tenant of the subject premises; that the Prior Tenant had leases commencing in 2015 and 2017; that there are forms asking for a listing of the household compositions of the lease; that the only names listed are the Prior Tenant and the Prior Tenant's Nephew's Brother, not Respondent; that

he has known the Prior Tenant since 1990, when he started working at the Building; that he spoke with the Prior Tenant when he would see the Prior Tenant in the lobby or in the subject premises; that he would be at the Building between one and three times a week; that the Prior Tenant was a man's man; that the Prior Tenant lived with his two sisters, who he also knew; that the Prior Tenant was the one who would call and schedule repairs; that he spoke with the Prior Tenant about his family; that he knew the Prior Tenant's Sister and Margaret and the Prior Tenant's Nephew's Brother and the Co-Respondent's Mother; that they took care of the Prior Tenant, especially Co-Respondent's Sister; that the Prior Tenant did not talk about Respondent; that he only saw Respondent in the subject premises and not on a regular occasion; that when the lease came due, he asked to put the Prior Tenant's Nephew's Brother on the lease; that they acknowledged that the Prior Tenant's Nephew's Brother lived there and that the Prior Tenant's Nephew's Brother was a nephew and was not necessarily entitled to succession; that he was not aware of the Prior Tenant trying to add Respondent to the lease; that Respondent never contacted him about the subject premises; that at some point he heard that the Prior Tenant from the Prior Tenant's nephew; and that the Prior Tenant's Nephew's Brother requested that the lease be put in his name; and that the Prior Tenant's Nephew's Brother did not ask about Respondent.

The Property Manager testified on cross-examination that Respondent was in the subject premises; that he did not know if Respondent lived there; that the Prior Tenant would come to the Christmas parties in the lobbies; and that he did not know how the Prior Tenant's sisters died.

Walter Lopez ("the Resident Manager") testified that he lives in apartment 1A at the Building; that he has had his title for thirteen years; that he normally works from 8 a.m. to 4 p.m.; that he is around the Building all the time; that in the mornings he is usually in the office or the lobby area; that he has a video monitor where he can see what is going on; that he knows the

subject premises; that the Prior Tenant was the tenant of the subject premises; that he knew the Prior Tenant since he starting working in the Building; that he saw the Prior Tenant a couple of times a week when the Prior Tenant was more mobile, in the lobby; that he engaged in regular chit chat with the Prior Tenant; that the Prior Tenant was a nice guy; that he knows members of the Prior Tenant's family; that he knew Co-Respondent, Co-Respondent's Sister, and the Prior Tenant's Sister; that they all lived in the Building; that the Prior Tenant did not talk to him about the Prior Tenant's family or Respondent; that he never saw Respondent with the Prior Tenant other than in the subject premises; that the Prior Tenant, not Respondent, would call him about a repair that was needed; that the Prior Tenant would be there; that he saw the Prior Tenant entered the Building with groceries; that he never saw Respondent enter the Building with groceries; and that there was a directory in the Building.

The Resident Manager testified on cross-examination that there are 206 units in the Building; that he is in charge of maintenance at all of the units; that he did not visit the subject premises daily; that he only visited the subject premises when they put in service requests, depending on when there were requests; that he saw Respondent go in and out of the Building, but not with the Prior Tenant; that he could not see into the mailbox; that he never dined with the Prior Tenant; that he did not know the Prior Tenant's birthday; that he was not informed about the Prior Tenant's funeral; and that he did not know about the Prior Tenant's ailments.

The Resident Manager testified on redirect examination that he went to the funeral.

Respondent testified on Petitioner's rebuttal case that she does not know Nyenonbai Salman; that in June and July of 2017 the Prior Tenant had a home health care worker; and that she does not know how much money the Prior Tenant had in his bank account at the time of his passing.

Respondent testified on cross-examination on Petitioner's rebuttal case that the Prior Tenant gave her cash if she needed it every day and that from 2015 to 2017 the home health aide was not there for twenty-four hours a day.

### **Discussion**

In order for Respondent to succeed to the Prior Tenant's tenancy, she must prove that she co-resided with the Prior Tenant for two years before the Prior Tenant passed and that she was a family member of the Prior Tenant. 9 N.Y.C.R.R. §2523.5(b)(1). As Petitioner has stipulated that Respondent co-resided with the Prior Tenant for two years before he died, what remains for Respondent to prove is that she was a family member of the Prior Tenant.

While Respondent was not a traditional family member of the Prior Tenant, an occupant of a rent-stabilized apartment can succeed to the tenancy if the occupant proves that they were a non-traditional family member of the rent-stabilized tenant. A non-traditional family member is any person who can prove an emotional and financial commitment and interdependence between such person and the tenant. 9 N.Y.C.R.R. §2520.6(o)(2). The codification of the holding in the landmark decision Braschi v. Stahl Assocs. Co., 74 N.Y.2d 201 (1989) in the Rent Stabilization Code established criteria for finding a non-traditional family relationship: longevity of the relationship; mutual reliance for payment of expenses and necessities; intermingling of finances, shown as a matter of example by joint bank accounts; engaging in family-type activities like attending family functions together; formalizing of legal obligations by means such as naming one another as beneficiaries in wills and/or executions of powers of attorney; holding themselves out as family members to other family members, friends, community members, and religious institutions; reliance on each other for daily family services or functions; and other manifestations of a long-term emotionally-committed relationship. 9 N.Y.C.R.R.

§2520.6(o)(2)(i)-(viii).

The preponderance of the evidence, including the consistent testimony of several disinterested witnesses,<sup>1</sup> proved that Respondent's relationship with the Prior Tenant was on a long-term basis. Not only did she live in the subject premises with him for fifteen years, but she knew him and his entire family for all of her life. The preponderance of the evidence similarly shows that the Prior Tenant habitually and informally assisted Respondent with small cash disbursements, a level of support that characterizes a non-traditional relationship analogous to a parent-child relationship. Matter of Davidson, 28 Misc.3d 536, 540 (S. Ct. Kings Co. 2010), 2025 Walton Assoc., LLC v. Arroyo, 34 Misc.3d 1232(A) (Civ. Ct. Bronx Co. 2012), Barnard Coll v. Ribowsky, 23 Misc.3d 1119(A)(Civ. Ct. N.Y. Co. 2009).

The preponderance of the evidence also clearly shows that Respondent and the Prior Tenant not only attended family functions together but that Respondent also related to members of the Prior Tenant's extended family as if they were Respondent's family members. Cf. Fleishman Realty Corp. v. Garrison, 27 Misc.3d 1202(A)(Civ. Ct. Bronx Co. 2010)(the involvement of a would-be successor in the life of another family member of a deceased tenant can be an important factor showing a family relationship).

Respondent's claim to be a family member of the Prior Tenant is at its weakest in two regards: that the Prior Tenant's family moved him into hospice without telling Respondent, and that the Prior Tenant bequeathed the bulk of his estate to nieces and nephews of the Prior Tenant other than Respondent. Respondent points out that the Prior Tenant was apparently concerned

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<sup>1</sup> All else being equal, the testimony of disinterested witnesses bears more weight than the testimony of interested witnesses, a proposition of particular saliency in determining a non-traditional family relationship. 2-4 Realty Associates v. Pittman, 137 Misc.2d 898, 900-901

about the effect of a bequest on Respondent's eligibility for SSI benefits and about Respondent's potential inability to prudently manage a substantial bequest. These concerns can mitigate this weakness in Respondent's case, although the Prior Tenant could have established a trust for Respondent if he was so inclined, but did not.

Deeper scrutiny of this inquiry, however, tends to confuse the forest for the trees. An evaluation of a non-traditional family succession claim is not an exercise of "check[ing] off which factors ... [R]espondent has successfully proven..." Lamarche v. Miles, 234 N.Y.L.J. 88 (Civ. Ct. Kings Co. 2005). As 9 N.Y.C.R.R. § 2520.6 (o)(2) specifically states that no single factor shall be solely determinative, "[t]he factors listed in the statute to consider in making the determination, such as sharing expenses and intermingling finances, are merely suggestions and not requirements." Wiener Mgmt. Co. v. Trockel, 192 Misc.2d 696, 703 (Civ. Ct. Queens Co. 2002). "It is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control." Braschi, supra, 74 N.Y.2d at 213, 530 Second Ave. Co., LLC v. Zenker, 160 A.D.3d 160, 163 (1st Dept. 2018). Given that a succession determination is concerned with a sudden dislocation of family members who have always treated a rent-stabilized dwelling as their family home, Braschi, supra, 74 N.Y.2d at 212, the meaningful distinction the Court must make is between a "genuine family member[]" and a "mere roommate[]". Id., 530 Second Ave. Co., LLC, supra, 160 A.D.3d at 165 (finding that conduct of an occupant to be inconsistent with a mere roommate relationship to be a factor in determining the existence of a non-traditional family relationship).

With this policy as a background, the shortcomings in Respondent's case do not belie her

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(Civ. Ct. N.Y. Co. 1987), *aff'd*, 144 Misc.2d 311 (App. Term 1st Dept. 1989).

long-term relationship with the Prior Tenant, his daily financial support for her over a protracted period of time, and the web of family-type relationships that Respondent developed with many other members of the Prior Tenant's family, all cementing a reasonable expectation on Respondent's part that her occupancy of the subject premises was wrapped up in her family relationship with the Prior Tenant.

Accordingly, the preponderance of the evidence indeed demonstrates that Respondent had a non-traditional family relationship with the Prior Tenant and it is therefore ordered that the Court dismisses this proceeding for a failure to prove that Respondent has been a licensee of the Prior Tenant rather than an occupant entitled to succession to the tenancy of the subject premises as provided in the Rent Stabilization Code.

This constitutes the decision and order of the Court.

Dated: New York, New York  
November 13, 2023



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HON. JACK STOLLER  
J.H.C.

APPROVED  
JSTOLLER , 11/13/2023, 4:14:39 PM