

**Andrew Jackson Realty Co., L.P. v Patan**

2023 NY Slip Op 34858(U)

August 8, 2023

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 313456/2022

Judge: Clinton J. Guthrie

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

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ANDREW JACKSON REALTY CO., L.P.,

Index No. L&T 313456/22

Petitioner,

-against-

**DECISION/ORDER AFTER  
TRIAL**

SYBILL PATAN, JOHN DOE, JANE DOE,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

The Decision/Order after trial in this summary holdover proceeding is as follows.

PROCEDURAL HISTORY

This holdover proceeding based on a 90-day notice of non-renewal of tenancy was filed in September 2022. Respondent Sybill Patan (hereinafter “respondent”) filed an answer in February 2023, after the case was transferred to Part X for trial. A pretrial conference was held in June 2023, and the case was scheduled for trial on August 7, 2023. Petitioner, petitioner’s witness, and respondent appeared for trial on August 7, 2023. The trial was held and decision was reserved upon its conclusion.

TRIAL

Petitioner’s Exhibits 1-3, the certified deed, the certified multiple dwelling registration (MDR), and certified DHCR (Division of Housing and Community Renewal) registration apartment information for the subject premises, were admitted over respondent’s objections. Petitioner then

called its sole witness, Sheldon Hoffman. Mr. Hoffman testified that he is an officer for Sibling Management, which is the manager for petitioner Andrew Jackson Realty Co., L.P. He further testified that he is familiar with the subject premises and with respondent. When asked if respondent had a lease, Mr. Hoffman replied that she did not currently have a lease.

Mr. Hoffman then testified about respondent's original lease, which was identified as petitioner's Exhibit 4. Mr. Hoffman authenticated the signatures of petitioner's agent (Gary Hoffman) and respondent on the lease. Without objection, petitioner's Exhibit 4 was admitted. Mr. Hoffman testified that respondent's lease was renewed annually until 2021. He stated that her 2021 lease ran until April 2022. The final renewal lease, dated March 21, 2021, was identified as petitioner's Exhibit 5. After Mr. Hoffman testified to authenticate the signatures, the lease (excepting a final application page) was admitted as petitioner's Exhibit 5.

Next, the court took judicial notice of the pleadings and affidavits of service upon petitioner's attorney's request. In anticipation of respondent's defenses, petitioner's attorney questioned Mr. Hoffman about the DHCR registration for the subject premises (Exhibit 3). Mr. Hoffman testified that he was part of the deregulation (from rent stabilization) of the subject premises in 2005. He testified that the last rent stabilized tenant moved out and the rent was increased using the formula then permitted to exceed the deregulation threshold of \$2,000.00. He denied that any increase at the time was due to individual apartment increases. He confirmed that the last improvement increases were in 1984 and 1987, according to the DHCR registration.

Mr. Hoffman testified that he became involved with management of the subject premises between 1995 and 2000. He testified that there were no apartment improvements done to respondent's apartment since then.

On cross-examination, Ms. Patan asked Mr. Hoffman when he made renovations to deregulate her apartment. He replied that there were no renovations done to deregulate the apartment. When asked whether he had any bills for renovations to respondent's apartment, Mr. Hoffman replied that he did not. Upon the conclusion of Mr. Hoffman's testimony, petitioner rested.

Ms. Patan testified on her behalf. She testified that the eviction case was brought because she "lowered" her rent to her neighbor's rent amount because her neighbor's apartment was much nicer and more recently renovated. She stated that her own apartment was not renovated since the 1970s. She explained that she understood that there was a change in the law in 1980 whereby hot and cold faucets could not be separate, and that she had separate hot and cold faucets. She also testified about a broken lock at her back-room door, and the general "very poor" condition of her apartment.

Ms. Patan testified that when she moved in, she paid the rent requested and agreed to "substantial increases" thereafter. She testified that after she was terminated from her job, she called Gary Hoffman, Sheldon Hoffman's brother (and co-manager) to ask for a lower rent. She stated that he insisted that she pay \$2,225.00 per month in 2021. Ms. Hoffman testified that she kept paying \$1,950.00, hoping that petitioner's agents would change their mind about the rent amount. Ms. Patan testified that Gary Hoffman "yelled" at her on the phone and that she felt harassed by this.

Ms. Patan testified that she initially did not know about her apartment's rent history. She then testified that if her apartment were rent stabilized, she would be able to apply for SCRIE (Senior Citizen Rent Increase Exemption) as a tenant over age 62. She testified that her apartment

was registered at some point as having two (2) bedrooms and she believed that affected her rent amount. She also testified that she lives right around the corner from her son, who is an aide to her.

Ms. Patan had 12 photographs of her bathroom identified (respondent's Exhibits 1-12). She testified that the photographs were taken last fall. Over petitioner's objection, respondent's Exhibits 1-12 were admitted into evidence. After the photographs were admitted, respondent rested. Petitioner declined to cross-examine respondent.

Following summations by both parties, the trial concluded.

#### DETERMINATION/CONCLUSION

Upon due consideration of the trial evidence and testimony, the court finds that petitioner is entitled to a final judgment of possession against Sybill Patan. The evidence, testimony, and pleadings established petitioner's prima facie case under Real Property Law §§ 226-c. A proper 90-day notice of non-renewal was served as required by law (*see Mohegan Vista Props. LP v. Mazo*, 76 Misc 3d 500, 502 [Ossining Just Ct 2022]; *64 Van St., LLC v. Cuevas*, 67 Misc 3d 614, 616 [Civ Ct, Queens County 2020]).

Respondent's answer, which challenged the alleged deregulation of the subject premises, put the regulatory status into issue such that petitioner was required to prove that the premises was not subject to rent regulation (*see TJA Realty, LLC v. Hermosa*, 56 Misc 3d 130[A], 2017 NY Slip Op 50858[U], \*2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017]). Nonetheless, petitioner met its burden to demonstrate proper deregulation through Mr. Hoffman's testimony and the DHCR rent registration (petitioner's Exhibit 3).

The registration shows that the last regulated tenant was John Gerzel, whose tenancy ran from October 1992 through October 2004. The last regulated rent that Mr. Gerzel paid was

\$1,632.77. Upon the vacancy at the conclusion of Mr. Gerzel's tenancy, petitioner was entitled to a 20% vacancy increase per Rent Guidelines Board Order #36 and (then-existing) Rent Stabilization Law (RSL) § 511(c)(5-a) (*see Altman v. 285 W. Fourth LLC*, 31 NY3d 178, 184 [2018]). The 20% increase from the last legal regulated rent would have increased the amount to \$1,959.32. In addition, petitioner was entitled (at the time) to take a "longevity increase" pursuant to 9 NYCRR § 2522.8(a)(2)(ii), since petitioner had not taken a vacancy increase for more than eight (8) years before the vacancy following the end of Mr. Gerzel's tenancy (*see Ador Realty, LLC v. Div. of Hous. & Community Renewal*, 25 AD3d 128, 132-133 [2d Dept 2005]). As the registration shows that the last vacancy increase was taken in October 1992 and Mr. Gerzel's tenancy ended in October 2004 (a duration of 12 years), petitioner was entitled to a longevity increase equaling the last regulated rent (\$1,632.77) multiplied by .6% (9.797), multiplied by 12 years, for a total of \$117.56. The \$117.56 added to \$1,959.32 would have brought the rent to \$2,076.88, which exceeded the deregulation threshold of \$2,000.00 then in effect (*see Altman*, 31 NY3d at 185-186). While Mr. Hoffman testified that the deregulation amount was \$2,027.90, less than the calculations made by the court herein, the deregulation threshold was reached in any event upon the vacancy at the end of Mr. Gerzel's tenancy.

While respondent's defense centered around improper renovations and IAIs, the only improvements alleged in the rent registration are from 1980s. Respondent's evidence, including the photographs of her bathroom, were insufficient to challenge any improvements that may have been made nearly 40 years ago (*see generally Matter of Boyd v. Div. of Hous. & Community Renewal*, 23 NY3d 999, 1000-1001 [2014]). Notably, as stated above, the increases that took the legal regulated rent over the deregulation threshold were solely attributable to vacancy and longevity increases.

Therefore, respondent's defenses and counterclaims are dismissed after trial.<sup>1</sup>

The proceeding is dismissed without prejudice against John Doe and Jane Doe. Petitioner's case did not include evidence of any adult other than Ms. Patan living in the subject apartment. The court will not grant relief against John Doe and Jane Doe as mere placeholders (*see Wilmington Trust, N.A. v. Shasho*, 197 AD3d 534, 536 [2d Dept 2021] [citing CPLR § 1024]; *McDonagh v. Kelleher*, 2023 NY Slip Op 50815[U], \*3 [Civ Ct, Queens County 2023]).


A warrant of eviction shall issue against Sybill Patan forthwith. Execution of the warrant shall be stayed through October 13, 2023 for respondent to vacate the subject premises. A marshal's notice shall be served prior to execution upon default (*see* RPAPL § 749(2)). The EED shall be October 16, 2023.

This Decision/Order will be filed to NYSCEF and copies will be emailed and mailed to Sybill Patan at the subject premises.

The parties are directed to pick up their exhibits within 35 days or they will be sent to the parties or destroyed at the court's discretion in accordance with DRP-185.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
August 8, 2023

  
HON. CLINTON J. GUTHRIE, J.H.C.

~~ORDERED - HON. CLINTON J. GUTHRIE~~

<sup>1</sup> To the extent that respondent has articulated a counterclaim based on rent overcharge, she has failed to demonstrate fraud that would justify examining the rental history beyond the four-year statute of limitations for overcharge claims governed by pre-HSTPA (Housing Stability and Tenant Protection Act of 2019) law (*see Matter of Regina Metro. Co., LLC v. Div. of Hous. & Community Renewal*, 35 NY3d 332, 356 n 7 [2000]; *Burrows v. 75-25 153rd St., LLC*, 215 AD3d 105, 109 [1st Dept 2023]). The court has reviewed the rental history in the context of the deregulation claim, as it is not similarly governed by a statute of limitations (*see Matter of 150 E. Third St LLC v. Ryan*, 201 AD3d 582, 583 [1st Dept 2021]; *East W. Renovating Co. v. Div. of Hous. & Community Renewal*, 16 AD3d 166, 167 [1st Dept 2005]).