

338 W 49 LLC v Mendez

2024 NY Slip Op 33003(U)

April 15, 2024

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

Docket Number: LT Index No. 308390-22

Judge: Alberto M. Gonzalez

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

-----X
338 W 49 LLC,

LT Index No.: 308390/22

PETITIONER-LANDLORD

-against-

DECISION/ORDER

SAMANTHA MENDEZ

RESPONDENT-TENANT
-----X

Hon. Alberto Gonzalez:

Recitation as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent’s motion granting leave to interpose an amended answer, pursuant to CPLR § 3025(b), and granting Respondent leave to conduct limited discovery pursuant to CPLR § 408, AND Petitioner’s cross motion joining Patrick Avila, pursuant to CPLR § 1003, CPLR § 401 and NYCCCA 110(d), amending the petition to include all claims for rent arrears to date, and denying Respondent’s motion in its entirety.

<u>Papers</u>	<u>NYSCEF DOC #</u>
[Respondent’s] Notice of Motion;	13
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Procedural History and Factual Background

The instant nonpayment proceeding was initiated by service of a notice of petition and petition, dated May 31, 2022, seeking unpaid rent, at a monthly rent of \$2,950, for the period of January 2022 to April 2022, for a total of \$9,070.00. *See NYSCEF #1 and #2.*

Thereafter, the Respondent filed an answer, dated October 21, 2022, which resulted in the proceeding's first court appearance on December 5, 2022 at 2:30pm. *See NYSCEF # 7*. On December 5, 2022, the proceeding was adjourned to January 18, 2023 at 11:30am.

On January 17, 2023, the Legal Aid Society, filed a Notice of Appearance and a notice of a pending or completed Emergency Rental Assistance Program (ERAP) application. *See NYSCEF #9*. As such, on January 18, 2023, the proceeding was placed on the ERAP administrative calendar and stayed, pending disposition of the ERAP application.

On February 15, 2023, Petitioner's counsel filed a motion with the court, dated December 15, 2023, requesting the matter be restored to the court's calendar and to vacate the ERAP stay. *See NYSCEF # 10*. The motion was made returnable on December 29, 2023, but was calendared for January 16, 2024. On January 16, 2024, the parties entered into a stipulation which granted Petitioner's motion to the extent of restoring the proceeding to the court's calendar, and that "the ERAP stay [is] no longer in effect." *See NYSCEF # 11*. The proceeding was then adjourned to March 25, 2024 for motion practice. *Id.* The parties then executed a stipulation, filed with the court on February 16, 2024, providing a briefing schedule and adjourning the proceeding to April 9, 2024. *See NYSCEF # 12*.

Respondent's Motion

On March 6, 2024, Respondent filed a motion requesting leave to interpose an amended answer and granting Respondent leave to conduct limited discovery pursuant to CPLR § 408.

Respondent's counsel writes, "Respondent appeared *pro se*, and she had no legal background that would have facilitated her self-representation. [Thus,] Respondent was unaware of meritorious objections in point of law, defenses and counterclaims she could have raised against Petitioner's claims." *See NYSCEF # 14* ¶ 33. Respondent further writes, "[a]mong the

objections in point of law, defenses, and counterclaims are a failure to name a necessary party, defective rent demand, rent overcharge, improper deregulation, that Petitioner is precluded from maintenance of a summary proceeding due to its failure to register the subject premises with DHCR, and that the Petitioner has breached the warranty of habitability.” *See NYSCEF # 14* ¶ 34.

Respondent in support of its disclosure motion cites to a 2020 Regulatory agreement. Respondent writes, “the 2020 Regulatory Agreement provides for a noteworthy formula: for income-restricted apartments with pre-agreement rents higher than that prescribed by the income restriction in the agreement, the new, income-restricted rent controls; for income-restricted rent apartments with pre-agreement rents lower than those prescribed by the income restriction in the agreement, the pre-agreement rent controls; and for the apartments not subject to income restriction but newly stabilized as a result of the agreement, the rent is not adjusted other than pursuant to Rent Guidelines Board orders. *See supra* ¶¶ 13 (c), (d), (f), (g), (n). Where, for income-restricted apartments, pre-agreement rents control, those pre-agreement rents must be registered as preferential rents. *See supra* ¶ 13 (i).” *See Id* ¶ 62.

Respondent further writes, “[w]hether, then, the 2020 Regulatory Agreement set an initial rent for the subject premises or whether it did not adjust the pre-agreement rent requires an inquiry into the rent at the base date, which preceded that of the execution of the agreement.” *See Id* ¶ 63.

Respondent asks the court to grant discovery to Respondent under Pre-HSTPA Law given its colorable claim of fraudulent deregulation prior to the execution of the 2020 Regulatory Agreement. Specifically, Respondent asserts that “[i]n the rental history for the subject premises, there are two unexplained increases: first, an 11.5% increase in the registered legal regulated rent

from the tenancy of Michael Vanner¹ to the beginning of the tenancy of Juliette Creglia², where the combination of Rent Guidelines Board increase (4%), a vacancy increase (5%), and an MCI (\$7.83, or approximately 1.2%) provided for a maximum increase of 10.2%, *see supra* ¶¶ 3-4, 9, and Exhibit Q - Rent Guidelines Board Apartment Orders # 1 through # 55; and second, a 95.8% increase in the rent between the final year of Ms. Creglia's tenancy, which was registered at \$866.30, and the first year of Sonia Plato's tenancy³, which was registered at \$1,696.50 and which exceeded the permissible 21.8% increase the permissible vacancy increase (17%) and longevity bonus (4.8%) Petitioner's predecessor-in-interest could have collected pursuant to 9 N.Y.C.R.R. § 2522.8. *See Id* ¶ 72.

Respondent further claims, Petitioner's predecessor-in-interest did not claim an IAI, or file permits with the Department of Buildings in relation to the subject premises, including the end of Mr. Vanner's tenancy and the beginning of Ms. Creglia's tenancy, or when the apartment was vacant and then deregulated. Also, "Petitioner's predecessor-in-interest offered a preferential rent that was 10% lower than the registered legal regulated rent just as the registered legal regulated rent was within striking distance of the then-applicable \$2,000 deregulation threshold⁴ pursuant to RSL § 26-504.2 (amended 2015). Taken together, these factors provide for indicia of fraud." *See Id* ¶ 75.

¹ Michael Vanner was the tenant of record in the subject premises from January 1, 1993 to December 31, 1994 at a monthly rent of \$650. *See NYSCEF # 16*.

² Juliette Creglia was the tenant of record in the subject premises from January 15, 1995 (at a registered rent of \$750), to January 31, 2003 (at a registered rent of \$866.30). *See NYSCEF # 16*.

³ Ms. Sonya Plato's tenancy began on April 4, 2024 (at a registered legal rent of \$1696.50, with a preferential rent of \$1525) to March 31, 2006 (at a registered rent of \$1,755.88, with a preferential rent of \$1,578.38). The \$1,755.88 registered rent/\$1,578.38 preferential rent is the last entry made listing a monthly rent charged. *See NYSCEF # 16*

⁴ In 2007, the landlord represented to DHCR that the apartment was exempt from Rent Stabilization, because of "High Rent Vacancy," *See NYSCEF # 16*.

Respondent also seeks disclosure as to their, “good faith challenge to the regulatory status of the subject premises[,]” as Respondent makes a colorable claim of improper deregulation. *See Id* ¶ 83.

Finally, Respondent seeks disclosure under the Housing Stability and Tenant Protection Act of 2019 to ascertain the last reliable rent as it may be affected by the 2020 Regulatory Agreement. Specifically, Respondent, writes: “Furthermore, if Petitioner fraudulently or, in the alternative, improperly deregulated the subject premises, and such base date rents are lower than those set pursuant to the 2020 Regulatory Agreement, by the terms of the 2020 Regulatory Agreement, Respondent would have been entitled to a rent stabilized lease with a preferential rent derived from the base date rent, which falls within the scope of this Court’s purview pursuant to RSL § 26-516 (h)(vi). Even if Petitioner properly deregulated the subject premises, Respondent nevertheless has ample need to know whether her apartment should be rent stabilized, subject to an affordability requirement, or both. Accordingly, in applying Rent Stabilization § 26-516 and CPLR § 213-a as amended by the HSTPA, this Court should grant Respondent limited discovery [to] ascertain the last reliable rent to the extent it was affected by the 2020 Regulatory Agreement.” *See Id* ¶ 93-95.

Petitioner’s Cross Motion

Petitioner filed its cross-motion, on March 29, 2024. Petitioner writes in its motion that, “although Petitioner entered into a regulatory agreement with the City of New York in 2020, the regulatory agreement does not apply to all the apartments in the Subject Building, but instead applies to those units designated as “low-income units” and Exhibit C to the regulatory agreement specifically states there are several market rate apartments. *See* NYSCEF Doc. No. 25, Exhibit J to Respondent’s motion. Further, because the Subject Apartment is not a

low-income unit it remains deregulated. *See* Affirmation of Elizabeth Jimenez, Paragraph 20.”
See NYSCEF # 37 ¶ 6-7.

Petitioner seeks to join Patrick Avila. Petitioner writes, “Mendez was the sole tenant on the lease and no occupants were named on the first page of the lease in the section where any occupants are to be listed, nor on the Occupancy rider to the lease.” *See* NYSCEF Doc. No. 27, pgs. 2 and 22. As such, the petition which was filed on June 7, 2022, names only Respondent and seeks rent arrears through April 2022. *See* NYSCEF Doc. No. 1. Notwithstanding that Respondent had fallen into rent arrears, Petitioner offered a renewal lease to commence June 1, 2022. As stated in the attached Affirmation of Elizabeth Jimenez, Respondent added typewritten signatures for her and Avila to the Extension of Lease offer and dated it June 10, 2022. Although the moving papers do not state when the Extension of Lease was then returned by Respondent to Petitioner, it could NOT have been earlier than June 10, 2022, three (3) days after the Petition was filed. *See* NYSCEF Doc. No. 1 and NYSCEF Doc.No. 28. As a result, even if Avila was an occupant of the apartment at the time the Petitioner was filed, he would have been a proper party, but not a necessary party.” *See NYSCEF # 37 ¶ 20-25.*

Petitioner also asks the court to amend the petition to date, “because permission to amend pleadings should be freely given pursuant CPLR § 3025 [and] [a]pplying these principles to this proceeding which began in June 2022, Respondent cannot claim prejudice or surprise, applications to amend petitions to date are routinely made and granted in Housing Court, and the rent arrears have steadily increased during its pendency.” *See Id ¶ 35-36.*

Petitioner also asks the court to deny Respondent’s motion to amend their answer, because it is devoid of merit and palpably insufficient. Petitioner opposes Respondent’s first objection in point of law that Mr. Avila is a necessary party and failure to name him requires

dismissal, because he is a necessary party given that he is not a party to the lease but instead an occupant. *See Id* ¶ 41-42. Petitioner also opposed Respondent's Second Objection in Point of Law that alleges the rent demand is not a good faith estimate, Petitioner's first defense because it fails to establish a "colorable claim of fraud," and that Respondent's Second Defense and First Counterclaim fail to state defense or a cause of action. *See Id* ¶ 56-58.

Petitioner also objects to Respondent's motion for disclosure, "it is respectfully submitted that Respondent's motion to amend the answer should be denied because it is devoid of merit. Consequently, Respondent fails to show ample need at the most basic level because by denying the application for an amended answer there is no cause of action giving rise to a purported need for disclosure. However, even if the motion for leave to amend the answer were to be granted by the Court, Respondent still fails to demonstrate ample need under the Farkas test. *See Id* ¶ 65-66. Petitioner further alleges, that Respondent fails to state a legally sufficient claim of a fraudulent scheme to deregulate as they point only to an increase in the rent alone and do not identify evidence of a fraudulent scheme. Specifically, Petitioner asserts "[t]he subject apartment is exempt from rent stabilization because the legal rent rose above the deregulation threshold on or about July 1, 2006. According to the registration, the legal rent for the Subject Apartment was \$1,755.58 for a lease term from April 2005 through March 2006. See NYSCEF Doc. No. 16. Exhibit A to Respondent's motion. That tenant subsequently vacated the apartment, and the next lease was for a one-year term beginning on July 1, 2006. *See* Exhibit 1. In July 2006, the vacancy increase for a one-year lease was 17.25%. As a result, the landlord of the Subject Apartment at that time was entitled to an increase of \$302.89 which increased the legal rent to \$2,058.77[.]" *See Id* ¶ 71-74.

Petitioner then states that it would be greatly prejudiced by any further delays as the arrears will continue to grow, that Respondent's demands are voluminous and not narrowly tailored, and that Petitioner is not in possession of documents prior to the 2006 lease. *See Id.* ¶ 86.

Respondent's and Petitioner's Reply

Respondent's reply opposes the joinder of Mr. Avila because Mr. Avila vacated the subject premises and moved out in January 2023. *See NYSCEF # 42* ¶ 4-5. Notwithstanding, Respondent seeks to interpose its first objection in point of law as at the time of the filing, Patrick Avila was a necessary party and Petitioner was aware of Mr. Avila's presence. Concerning its second objection in point of law, Respondent alleges Petitioner's rent demand does not set forth the proper period for which rent was due and is predicated on an overcharge. Further, Respondent alleges Petitioner does not oppose Respondent's third affirmative defense of rent overcharge, and that they have properly pled a multi-pronged defense of rent overcharge. *See Id.* ¶ 15, 16, 17, 27. Respondent also seeks disclosure because Petitioner does not oppose Respondent's proposed affirmative defense of improper deregulation, and that Petitioner mischaracterizes the nature of the 2020 Regulatory Agreement: "Petitioner claims that a unit can only be rent stabilized if its income-restricted. *See* Affirmation of David Troupp, NYSCEF Doc. No. 37 ¶ 87; Affirmation of Elizabeth Jimenez, NYSCEF Doc. No. 38 ¶ 20. However, in addition to the 198 units that are both income-restricted and rent stabilized, the agreement expressly requires that another 51 units be rent stabilized, albeit without being income-restricted. *See* Regulatory Agreement, Exhibit J to Respondent's Motion, NYSCEF Doc. No. 25, at 48 [...]. However, Petitioner makes no mention of, and offers no defense for its failure to register seven of the 249 rent stabilized apartments in the portfolio with DHCR." *See Id.* ¶ 48-49, 51.

Petitioner then filed a “supplemental affirmation in support of cross-motion,” which attaches an AMI Designation Agreement and a Unit Designation Side Letter with HPD, which Petitioner claims demonstrates that the subject apartment is not designated as a “Low Income Unit,” nor subject to any AMI restriction.” See NYSCEF # 45 ¶ 5.

Discussion

A. Petitioner’s and Respondent’s Motion To Amend

The CPLR provides that a party may amend a pleading at any time by leave of court, and that leave “shall be freely given upon such terms as may be just.” CPLR Rule 3025(b). Leave to amend under CPLR Rule 3025(b) is “committed to the court’s discretion,” but should be granted “freely.” See *Norwood vs. City of New York*, 203 A.D.2d 147, 610 N.Y.S.2d 249 (App. Div. 1st Dep’t 1994). Although trial courts retain broad discretion in determining when to grant leave to amend a pleading, courts have consistently held that, absent “significant prejudice to the opposing party,” leave to amend should routinely be granted. *1515 Macombs LLC vs. Jackson*, 50 Misc.3d 795, 20 N.Y.S.3d 869 (Civ. Ct. Bronx. Cty. 2015).

To successfully oppose a motion to amend, a party must prove that it will suffer prejudice if the court grants the motion. “[P]rejudice requires some indication that the defendant has been hindered in the preparation of his case or has prevented from taking some measure in support of his position.” *Cherebin vs. Empress Ambulance Corp.*, 43 A.D. 3d 364, 841 N.Y.S.2d 277 (App. Div. 1st Dep’t 2007). The liberal right to amend pleadings has been repeatedly affirmed.

“The kind of prejudice required to defeat an amendment is clearly described in Siegel, New York Practice 237, p 289: ‘It must obviously be a showing of prejudice traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added.’ ‘There must be some special right lost in the interim, some change of position or some significant

trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add.” *A.J. Pegno Const. Corp. v. City of New York*, 95 A.D.2d 655, 463 N.Y.S.2d 214 (App. Div. 1st. Dep’t. 1983). Further, the law is clear that “leave to amend should be freely granted unless the amendment sought is palpably improper or insufficient as a matter of law or unless prejudice or surprise directly results from delay in seeking such amendment.” *Barnes v. County of Nassau*, 108 A.D.2d 50, 487 N.Y.S.2d 827 (App. Div. 2nd Dep’t .1985).

In the instant matter, the court grants Petitioner’s motion to amend the petition to date. The instant matter was filed on June 7, 2022, and was stayed for one year as a result of Respondent’s filing of the ERAP application. Thereafter, Respondent filed the instant motion, and the petition has not been satisfied, despite additional months of rent having accrued and come due. As such, Petitioner’s motion to amend the petition to include all rent owed and outstanding through the date of this order is granted.

Similarly, the court will grant Respondent’s motion to amend its answer, to include all the defenses in Respondent’s proposed amended answer. When the Respondent filed their October 21, 2022 answer, they were Pro Se and did not have the benefit of counsel. Now, after having retained counsel, the Respondent has asserted defenses and counterclaims that are not devoid of merit or prejudicial to the Petitioner. Respondent offers facts and specific points to assert their overcharge claim – from which the defective rent demand defense stems – including unexplained increases, per the DHCR rent registration history, lack of DOB permits, and the 2020 Regulatory agreement. Similarly, the Respondent’s improper deregulation defense, which also relies on the above mentioned information, is not devoid of merit.

B. Respondent’s Motion For Discovery

Section 408 of the CPLR authorized the use of discovery in summary proceeding with permission of the court if ample need is shown. Disclosure, “may assist the speedy disposition of a case when it has served the purpose of clarifying the issues for trial.” *New York University v. Farkas*, 121 Misc.2d 643, 468 N.Y.S.2d 808 (Civ. Ct. N.Y. Cty. 1983)

In *New York University v. Farkas*, the court set forth six factors to consider when determining whether discovery is appropriate pursuant to CPLR § 408:

- 1) whether the party seeking discovery has asserted facts to establish a cause of action or defense;
- 2) whether there is a need to determine information directly related to the cause of action;
- 3) whether the requested discovery is carefully tailored and likely to clarify the disputed facts;
- 4) whether prejudice will result;
- 5) Whether prejudice can be diminished or alleviated, for example by prescribing a short time period to conduct discovery; and
- 6) Whether the court, in its supervisory role, can structure discovery so that the party against whom discovery is sought, particularly pro se tenant, will be protected and not adversely affected by the discovery requests.

In nonpayment proceedings, such as the instant one, tenants are allowed to assert rent overcharge defenses and counterclaims to defend against nonpayment proceedings, and in pursuit of the rent overcharge claims tenants can seek disclosure from the landlord.

As a result of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, overcharge complaints were to be investigated by, “consider[ing] all available rent history which is reasonably necessary to make such determinations.” 2019 McKinney's Session Law News of NY, Ch. 36, § 1 at Part F, § 6. The HSTPA, changed the analysis of rent overcharges, in that prior to 2019, rent overcharge claims were generally subject to a four-year statute of limitation, but events dating beyond the four-year statute of limitations could be considered – most notably to determine if the apt is rent regulated or to determine “whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date.” *See Gersten v. 56 7th Ave LLC*,

88 AD3d 189, 928 NYS2d 515 (App. Div. 1st. Dept); *Matter of Grimm v. State of New York Div of Hous and Community Renewal Office of Rent Admin*, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (2010).

The Court of Appeals, a year after the passage of the HSTPA, held in *Matter of Regina Metro Co., LLC* that, “the overcharge calculation amendments (of the HSTPA) cannot be applied retroactively to overcharges that occurred prior to their enactment.” See *Austin v. 25 Grove St. LLC*, 202 A.D.3d 429, 162 N.Y.S.3d 342 (App. Div. 1st. Dep’t. 2022). As such, any overcharge claims, which were alleged to have occurred prior to the passage of the HSTPA, were to have the prior law applied. *Id.*

The Court in Regina specifically states, “The rule that emerges from our precedent in that, under prior law, review of rental history outside the four-year lookback period was permitted only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate, and even then, solely to ascertain whether fraud occurred - not to furnish evidence for calculation of the base date rent or permit recovery for years of overcharges barred by the statute of limitations.” *Regina Metropolitan Co., LLC v. New York State Division of Housing and Community Renewal*, 154 N.E.3d 972, 130 N.Y.S.3d 759 (2020).

In addition, Appellate Courts have held that when pleading an overcharge claim, it must be pled as common law fraud: “evidence of representation of material fact, falsity, scienter, reliance and injury.” *Burrows v. 75-25 153rd Street, LLC*. 215 A.D.3d 105, 189 N.Y.S.3d 1 (App. Div. 1st Dep’t. 2023).

In the instant matter, the parties agree not every element of common law fraud is required to assert a fraudulent scheme to deregulate.

Petitioner and Respondent cite to Section 2-a of Part B of Chapter 760 of the Law of 2023 (as amended by chapter 95 of the Laws of 2024), as follows:

“when a colorable claim than an owner has engaged in a fraudulent scheme to deregulate a unit is properly raised as part of a proceeding before a court of competent jurisdiction or the state division of housing and community renewal, a court of competent jurisdiction or the state division of housing and community renewal shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances. In making such determination, the court or the division shall consider all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate that such fraudulent scheme to deregulate a unit was committed.” See Section 2-a of Part B of Chapter 760 of the Law of 2023 (as amended by chapter 95 of the Laws of 2024).

In addition, the Chapter 760, states that, “[n]othing in this act, or the HSTPA, or prior law, shall be construed as restricting, impeding or diminishing the use of records of any age or type going back to any date that may be relevant, for purposes of determining the status of any apartment under the rent stabilization law.” *Id.*

It is well established that a court may review the rental history in an apartment before the limitation period of four years, to determine an apartment’s rent regulatory status, which is not subject to a statute of limitations and may be determined at any time during a tenancy. See *Tovar vs. Adam’s Tower L.P.*, 2023 NY Slip Op 33594(U) (Sup. Ct. N.Y. Cty. 2023); *150 E.Third St. LLC vs. Ryan*, 201 A.D.3d 582, 158 N.Y.S.3d 555 (Mem) (App. Div. 1st Dep’t. 2022); *Kostic vs. New York State Division of Housing and Community Renewal*, 188 A.D.3d 569, 137 N.Y.S.3d 297 (App. Div. 1st Dep’t. 2020) (“Regardless of its age, an apartment’s rent history is always subject to review to determine whether a unit is rent stabilized (Matter of Regina Metro. Co., LLC vs. New York State Div. of Hous & Community Renewal, 35 N.Y.3D 332, 351 N 4, 130 N.Y.S.3d 759, 154 N.E.3d 972 [noting critical difference between overcharge claim and

challenge to deregulated status], 360 [upholding declaration that apartment is rent stabilized based upon history preceding lookback period notwithstanding that there may be no money damages] [2020] [.]”)

Here the court grants Respondent’s disclosure motion.

Respondent offers facts, namely the 2020 regulatory agreement, that may provide for “low income unit” status of the apartment, or otherwise subject the apartment to rent stabilization – and therein challenge the regulatory status of the apartment. A need exists then to determine where the subject premises fits within the regulatory status, and Respondent’s document demand is tailored to elicit responses to those points. Little to no prejudice will result to Petitioner from the demands, who is represented by learned counsel and can craft a response to the requests. As such, the court grants disclosure, per Respondent’s claims, under the 2020 regulatory agreement, that the apartment is rent stabilized.

Further Respondent offers facts to challenge the current regulatory status of the apartment, as per the alleged 2007 improper deregulation. Respondent claims “unexplained” increases – that are not supported by IAIs or DOB permits – and the improper use of preferential rents, which may bring the apartment under rent stabilization. Further, Petitioner’s production of the first lease following deregulation is insufficient to deny disclosure. Respondent correctly points out that the alleged irregularities preceded the lease and that said lease does not include the rider the first tenant was to receive following the high rent deregulation. As such, the court grants Respondent’s motion, as per the regulatory status challenge arising from the 2007 deregulation. Moreover, the court also notes that the same facts offer sufficient indicia of fraud⁵ to allow review of the rental history 4 years beyond the statute of limitation.

⁵ Chapter of 760 states *Thorton vs. Baron* and *Grimm vs. DHCR* are “controlling authority.” The “substantial indicia of fraud” analysis derives from *Grimms vs. DHCR*.

Thus, Petitioner's counsel is directed to provide Respondent with a response to their document demand and interrogatories within forty-five days of service of this decision with notice of entry.

Notwithstanding, Petitioner's counsel shall not be required to comply/respond to item 3, 12, 13, and 15 of Respondent's document demand, which the court deems overbroad. To the extent that Petitioner does not have custody or control of the documents, it shall produce an affidavit from its agent stating such.

C. Petitioner's Cross Motion

"Necessary parties are defined in CPLR § 1001 as, "Persons who ought to be parties if complete relief is to be accorded between the parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants." Proper parties are those whose absence will not prevent the entry of a binding judgment, but whose presence would make an order or judgment more complete." *2110 Arthur Assets LLC vs. Vista Management Corp*, 57 Misc.3d 1201(A), 66 N.Y.S.3d 655 (Civ. Ct. Bronx. Cty. 2017).

As held by the Appellate Division, "due process requires only that, for the warrant to be effective against a subtenant, licensee or occupant, he be made a party to the proceeding, either by naming him in and serving him with the petition and notice of petition or by joining him as a party during the pendency of the proceeding (CPLR 401; CCA 110)." *170 W. 85th St. Tenants Assn v. Cruz*, 173 A.D.A2d 338, 569 N.Y.S.2d 705 (App. Div. 1st. Dep.t 1991).

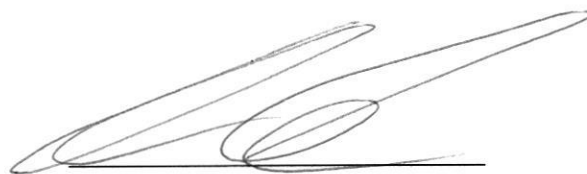
In the instant matter, Patrick Avila is not a tenant and does not raise succession claims to the subject apartment. Though, Mr. Avila attempted to sign a lease, it was without the consent of the Petitioner, and, per Petitioner, the lease was returned after the initiation of the instant

proceeding. Respondent is as such either a licensee, occupant or subtenant, but not a necessary party.

In their Reply, Respondent's counsel claims Petitioner's cross motion is now moot, as Mr. Avila has left the subject apartment, but Respondent's counsel did not state such in its proposed motion or in its motion in chief – it was Respondent that offered the defense and the facts underlying its necessary party defense. As such, the court grants Petitioner's motion and allows the joinder of Mr. Patrick Avila to the instant proceeding. Petitioner is as such directed to serve upon all parties, including Patrick Avila, an amended petition reflecting the joinder. Service to be performed within ten days of the date of this order.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Respondent's motion seeking leave to amend their answer and for disclosure is GRANTED. It is also ORDERED that Petitioner's Cross Motion to amend their petition and to join Patrick Avila is GRANTED. The matter is adjourned to June 7, 2024 at 9:30am in Part G for all purposes.



Hon. Alberto M. Gonzalez, HCJ
ALBERTO GONZALEZ
JUDGE, HOUSING COURT

Dated: New York, New York

April 15, 2024