

Boston Tremont Hous. Dev. Fund Corp. v Cancel

2025 NY Slip Op 31284(U)

January 15, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 316151/23

Judge: Christel F. Garland

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This opinion is uncorrected and not selected for official publication.

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

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BOSTON TREMONT HOUSING DEVELOPMENT
FUND CORPORATION,

Index No.
L&T 316151/23

Petitioner – Landlord,

-against-

Present
Hon. Christel F. Garland

MARIBEL CANCEL,

Respondent -Tenant,

DECISION/ORDER

GEORGE OLIVERA, DIBE MULERO,
HECTOR OLIVERAS, JR.

Respondents – Undertenants.

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN
THE REVIEW OF THIS MOTION BY RESPONDENT FOR DISCOVERY

PAPERS	NUMBERED
Notice of Motion, Affidavits & Affirmation Annexed	7-8, 10-12 (NYSCEF)
Answering Affidavits & Affirmation Annexed	39 (NYSCEF)
Replying Affidavits & Affirmation Annexed	51 (NYSCEF)
Memorandum of Law	9 (NYSCEF)
Exhibits	13-34, 40-49 (NYSCEF)

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS
AS FOLLOWS:

Petitioner commenced this nonpayment proceeding on or about March 27, 2023, seeking to recover possession of the subject apartment which the petition describes as being exempt from rent regulation because it is presently subject to the Section 8 Regulations of the Department of Housing and Urban Development (“HUD”).

Respondent Maribel Cancel initially appeared *pro se*. Later, Respondent George Olivera appeared by counsel, and subsequently both Maribel Cancel and Dibe Mulero appeared by counsel as well.

All three Respondents now seek relief from the court as follows:

Respondent Cancel seeks leave to file an amended answer and both Respondents Olivera and Mulero seek to interpose late answers. In addition, they seek limited discovery arising from income calculations relating to their obligation to recertify their income.

In support of her motion, Respondent Cancel argues that she should be granted leave to amend her answer because when she filed her *pro se* answer, she was unaware of viable defenses available to her regarding improper termination of her Section 8 subsidy, improper rent demand, and Petitioner's failure to comply with mandated Violence Against Women's Act ("VAWA") notices.

As for Respondents Mulero and Olivera, they contend that they should be granted leave to file answers to the petition because they too were unaware of viable defenses available to them and because Petitioner will not be prejudiced as there have been no substantive proceedings in this matter.

In support of their respective requests, all three Respondents argue that Petitioner improperly seeks market rent for the months sued for in the petition because Petitioner improperly terminated their Section 8 subsidy and began charging them rent at the market rate. Specifically, Respondents argue that Petitioner failed to comply with applicable HUD Handbook requirements regarding recertification reminder notices relating to their December 2021 and December 2022 recertification anniversary dates, and they dispute Petitioner's calculation of their monthly rent share which they argue is based on incorrect calculations of their household income. Given the above, Respondents argue that they have established ample need for the documents they seek in discovery because the requested information will clarify whether Petitioner met its obligation pursuant to the HUD Handbook and will confirm what the proper share of the rent should be during the period at issue based on their income at the time. Respondents further argue that the disclosure will not prejudice Petitioner given that the HUD Handbook mandates Petitioner to keep records of its income verification efforts in the tenants' files.

In opposition, Petitioner argues that Respondents' motion to amend the *pro se* answer and to file a late answer should be denied because the proposed amendment and the proposed answers are devoid of merit. Specifically, Petitioner argues that it was entitled to charge Respondents market rent because Respondents failed to timely recertify their income *and* appear for their recertification meeting. Petitioner argues that Respondents mistake beginning to report income as completing the recertification process which does not occur until the critical steps highlighted occur.

CPLR § 3025 (b) provides that a party may amend its pleadings or supplement them by setting forth additional or subsequent transactions or occurrences, at any time by leave of court. The decision to allow or disallow a requested amendment is committed "almost entirely to the Court's discretion to be determined on a *sui generis* basis" (*Murray v City of New York*, 43 NY2d 400, 404-405 [1977], quoting Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR 3205:4, p. 476). And, absent prejudice or surprise resulting directly from the delay, leave to amend a pleading shall be freely given (CPLR §3025 [b]; *see also McCaskey, Davies and Assocs., Inc. v New York City Health & Hosps. Corp.*, 59 NY2d 755, 757 [1983]; *see*

also *Fahey v Ontario County*, 44 NY2d 934 [1978]). In addition, the prejudice suffered must be of a significant nature (see *Edenwald Contracting Co. Inc. v City of New York*, 60 N.Y.2d 957 (1983)). It is insufficient to allege prejudice without more.

Following the court's review of the procedural history in this proceeding, the parties' respective arguments and submissions, this court finds sufficient basis to grant the relief sought with regards to the amended answer and late answers which the court finds are not devoid of merit.

Separately, it is well-settled that discovery within the context of a summary proceeding is not granted as a matter of right, and that instead it must be obtained with leave of court (see CPLR § 408). Notwithstanding, it has been held that "discovery is not...inherently hostile to the nature of the summary proceeding", and that "although there may be [a] presumption against discovery in summary proceedings, exceptions to this rule have emerged...and if ample need is demonstrated discovery may be ordered" (*New York University v Farkas*, 121 Misc 2d 643, 645, 468 NYS2d 808 [Civ Ct, NY County 1983] [internal quotation marks and citation omitted]).

The Court in *Farkas, supra*, enunciated the following factors to aid in the determination of whether ample need has been established: 1) whether a cause of action exists; 2) whether the information sought is directly related to the cause of action; 3) whether the disclosure is carefully tailored and likely to clarify disputed facts; 4) whether prejudice will result from granting disclosure; 5) whether such prejudice can be alleviated or diminished by a court order; and 6) whether disclosure can be structured to protect the parties.

The HUD Handbook provides guidance for steps an owner must take prior to charging a tenant market rent. The Handbook provides that owners must provide tenants with an initial notice and subsequent reminder notices during the annual recertification process (see United States Department of Housing and Urban Development. Specifically, owners are required to, upon initial signing of the lease and at each annual recertification, provide an initial notice to the tenant. This notice must be signed and dated by the tenant to acknowledge receipt, and the owner or manager must sign and date the notice as a witness. Following the initial notice, owners must provide tenants with a reminder notice at least 120 days prior to the recertification anniversary date. If the tenant fails to respond within 30 days of the first reminder notice, the owner must provide a second reminder notice approximately 90 days prior to the tenant's recertification anniversary date informing the tenant that his/her recertification information is due. If the tenant does not respond to the second reminder notice before 60 days prior to the recertification anniversary date, the owner must provide the tenant a third reminder notice no later than 60 days prior to the anniversary date. This notice also serves as a 60-day notice to terminate assistance, and as a 60-day rent increase notice. Among other things, this notice must specify the amount of rent the tenant will be required to pay if the tenant fails to provide the required recertification information by the recertification anniversary date and state that this rent increase will be made without additional notice. Owners must maintain the notices with original signatures in the tenant's file and provide copies of the signed notices to the tenant, and must maintain copies of each notice in the tenant file to document the date the notices were issued.

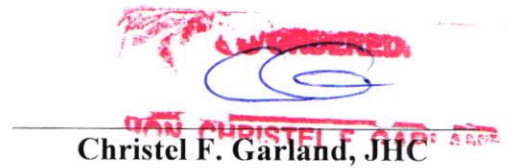
Based on the court's review of the parties' respective claims and arguments, the court finds sufficient basis to grant discovery so that Respondents can get to the bottom of whether their

recertification was conducted and processed as required and therefore whether the market rate rent sought here is proper.

As such, Respondents motion is GRANTED to the extent that the proposed verified amended answer and late answers filed as NYSCEF documents #13 and #14 are deemed served and filed. In addition, Petitioner is directed to respond to Respondents' proposed discovery demand filed as NYSCEF document #15 within 30 days from the day of receipt of the court's order which shall be uploaded to NYSCEF. Upon completion of discovery, the parties are to contact the part and restore the matter to the calendar by stipulation or by notice of motion.

This constitutes the decision and order of the Court.

DATED: January 15, 2025



GRANTED
DON CHRISTEL F GARLAND JHC

Christel F. Garland, JHC