

**Harway Terrace Inc v Charchenko**

2025 NY Slip Op 33659(U)

September 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 506482/2019

Judge: Wayne Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of September 2025.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

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HARWAY TERRACE INC,

Plaintiff,

Index No 506482/2019

-against-

ORDER

OLENA CHARCHENKO,

Defendant.

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This action involves Plaintiff's claim that Defendant obtained shares and a proprietary lease to Apartment 14K in a residential coop located at 2475 West 16th Street, Brooklyn, New York, 11214 by falsely claiming that the apartment was her primary residence.

The complaint alleges three causes of action: fraud, negligent misrepresentation, and a request for a declaratory judgment that Defendant is not the valid owner of any shares in HARWAY TERRACE, INC.

A non-jury trial was held on April 21, and June 16, 2025. Plaintiff appeared by Woods Lonergan PLLC by Annie E. Causey Esq., 60 E 42nd Street Suite 1410, New York, New York 10165. The Defendant appeared by Wenig Saltiel LLP, by Meryl L. Wenig Esq., 321 Broadway 2nd fl., New York, New York 10007.

After the close of Plaintiff's case, Defendant moved for a directed verdict pursuant to CPLR 4401.

In August 2009, the Defendant purchased shares of stock in Plaintiff HARWAY TERRACE INC. (the Coop) appurtenant to Apartment 14K. At the time Defendant acquired the Coop, it was governed by the Mitchell Lama Housing Law.

In December of 2015, the Coop privatized pursuant to Article 2 Section 35 of the Private Housing Finance Law. Defendant received new privatized stock certificates in the Coop and entered into a new lease agreement for Apartment 14K in September of 2016.

Nina Shalshina Kovarsky, President of the Board of Plaintiff, testified at trial that, pursuant to the Mitchell Lama regulations, to be eligible to purchase stock in the privatized Coop, one had to have maintained Harway Terrace as their primary residence for six months prior to privatization. Kovarsky testified that the six months ran from June 9, 2015, to the date of the offering plan.

Kovarsky testified that she believed that Defendant never resided in the apartment. Kovarsky testified that she saw Defendant's son Ivan and his wife in the lobby and by the elevators but never saw Defendant until after the privatization. Kovarsky lived in the same building as Defendant's apartment but on a different floor.

Raisa Novikova, who was elected to the board of directors of HARWAY TERRACE in 2017, also testified at trial on behalf of Plaintiff. Novikova resided in Apartment 18J in 2475 West 16th Street since February of 2013, and throughout 2016 she visited her friend who resided in Apartment 14E on the same floor as Apartment 14K several times a week. She testified that she saw Ivan and his wife several times in the building and by the elevator, and also saw Ivan enter Apartment 14K. Novikova testified that she never saw Plaintiff in the building until after privatization.

Sofiya Kagan, who resided in Apartment 14G, also testified at trial on behalf of Plaintiff, and said that she frequently saw a young couple, whom she identified as the

Defendant's son and his wife, coming in and out of Apartment 14K starting in 2013 or 2014. Kagan testified that she never saw Defendant until after privatization.

Plaintiff called Defendant OLENA CHARCHENKO as a witness. CHARCHENKO testified that she was married to Archy Bakhrakh, from whom she was never divorced or legally separated. In 2004, CHARCHENKO received stock for a Mitchall-Lama cooperative apartment at Bayridge Air Rights, Apartment 20G together with Bakhrakh. CHARCHENKO was listed as a tenant on the lease for the Bayridge apartment.

CHARCHENKO testified that she did not move into the Bayridge apartment with Bakhrakh but stayed in their prior apartment with her son because she and Bakhrakh ceased living together in 2004 when they received the Bayridge stock. CHARCHENKO signed an occupancy affidavit 2016 for Apartment 20G at Bayridge which lists her as occupant. The form included her income for 2016.

When questioned by Plaintiff's counsel, CHARCHENKO testified that she chose not to live in the Bayridge apartment from 2004 through 2016.

In August 2009, CHARCHENKO purchased shares of HARWAY stock and moved into Apartment 14K.

In September of 2016, CHARCHENKO purchased the privatized stock of HARWAY at an insider price.

CHARCHENKO testified that her son did not move into Apartment 14K but would often visit her at the apartment. She testified that she was the only one living in the apartment.

CHARCHENKO testified that she listed the apartment of HARWAY TERRACE as her residence on her 2012 through 2016 federal and state income tax returns. Those tax returns and her W-2 forms were put into evidence and are consistent with her testimony.

Also in evidence are payroll records, tax refunds, driver's license, vehicle registration, car insurance voter registration, credit card statements, and bank statements, all of which list Apartment 14K at 2475 West 16th Street as Defendant's residence.

In deciding a motion for directed verdict, the court must accept as true the evidence of the opposing party and must give that evidence every favorable inference that can reasonably be drawn, and find that there is no rational process by which the finder of fact can find in favor of the opposing party (*Szczerbiak v Pilat*, 90 NY2d 553 [1997]; *Suzanne P. v Joint Bd. of Directors of Erie-Wyoming Cnty Soil Conservation Dist*, 41 NY3d 391, rearg. denied 41 NY3d 1000 [2024]; *Caccese v Liebherr Container Cranes, Ltd.* 149 AD3d 688 [2d Dept. 2017]).

Here, even accepting the testimony and documents introduced on Plaintiff's case, Plaintiff has not met its burden of proof. The essential allegation of Plaintiff's claim is that Defendant CHARCHENKO did not reside in her apartment as her primary residence.

A tenant of a Mitchell Lama apartment is required to reside in the apartment as their primary residence 28 RCNY § 3-02(n)(4). The regulations set forth the facts and circumstances to be considered in determining whether a tenant occupies an apartment as their primary residence 28 RCNY § 3-02(n)(4).

The factors listed are whether a tenant specifies an address other than the apartment as their residence on any tax return, motor vehicle registration, driver's license, voter registration or other government document. An additional factor is whether the tenant spent less than 183 days in the preceding calendar year at the apartment 28 RCNY § 3-02(n)(4)(i)(ii)(iv).

Plaintiffs presented no evidence that Defendant listed any other residence on tax returns, motor vehicle registration, a driver's license, voter registration, or other government documents. In fact, Defendant's federal and state income tax returns, and W-2 forms were introduced into evidence and are consistent with her testimony.

Also in evidence are payroll records, tax refunds, driver's license, vehicle registration, car insurance voter registration, credit card statements, and bank statements, tax refunds, driver's license, vehicle registration, car insurance voter registration, credit card statements, and bank statements, all listed Apartment 14K at 2475 West 16th Street as Defendant's residence.

Defendant's testimony was that she resided at Apartment 14K continuously from 2009 onwards and did not reside in the Bayridge apartment from 2004 through 2016. While Kovarsky, Novikova, and Kagan expressed their opinion that Defendant did not live at the building, the only factual observations that they were able to testify to was that they did not see Defendant in the building until after privatization and they saw her son and his wife in the building and entering Apartment 14K.

The fact that three tenants in a 182-unit apartment building did not see Defendant in the building is insufficient to support an inference that Defendant did not reside in the apartment for 183 days of the year.

Further, while the fact that Defendant signed an occupancy affidavit in 2016 for her husband's apartment in Bayridge may constitute a violation of Mitchell Lama regulations as pertains to the Bayridge apartment, it does not demonstrate that she did not spend at least 183 at Apartment 14K. Defendant testified that she sometimes visited her husband at his apartment in 2016 and that she signed the occupancy affidavit to be able to gain access to the building to visit him.

The record shows that all of Defendant's documentation, recognized under the Mitchell-Lama regulations as indicia of primary residence, listed Apartment 14K. There was no evidence that she resided elsewhere for at 183 days. On this basis, no rational factfinder could determine that Plaintiff met its burden of proving fraud by clear and convincing evidence, nor on its burden of proof on its claims of negligent misrepresentation, or declaratory judgment regarding ownership of the HARWAY TERRACE INC. shares appurtenant to Apartment 14K.

WHEREFORE, it is hereby ORDERED, that Defendant's motion for a directed verdict is Granted; and the case is dismissed on the merits, together with costs disbursements and fees.

Settle judgment on notice.

ENTER:



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JSC

**HON. WAYNE SAITTA  
J.S.C.**