

**25-70 Realty LLC v Bajana**

2025 NY Slip Op 33724(U)

April 11, 2025

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 313710-23

Judge: Logan J. Schiff

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

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25-70 REALTY LLC

Index No. L&T 313710-23

Petitioner-Landlord,

-against-

**DECISION/ORDER**

JONATHAN BAJANA, et al.

Respondents.

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Present: Hon. Logan J. Schiff  
Judge, Housing Court

Petitioner 25-70 Realty LLC commenced this licensee holdover proceeding against Respondent Jonathan Bajana and his undertenants/occupants Jane Doe and John Doe upon filing the Petition on August 7, 2023, seeking to recover possession of a rent-stabilized apartment located at 25-70 37th Street, Apartment 11, Astoria New York 11103.

This court afforded Respondent an oral answer with a succession defense under Rent Stabilization Code (9 NYCRR) § 2523.5(b)(1) by order dated January 19, 2024, and directed Respondent to produce documents in support of his succession claim. Subsequently, the court issued an order dated June 18, 2024, providing for a conditional preclusion order limiting the introduction of any evidence not produced by July 10, 2024. Following the completion of discovery, a trial took place on March 11 and March 26, 2025.

**LEGAL STANDARD**

A claim of succession rights under the Rent Stabilization Code is an affirmative defense to a licensee holdover proceeding that must be established by the party asserting the defense (*see e.g. Shalimar Leasing, L.P. v Medina* 73 Misc.3d 22 [App Term, 2d Dept, 2d, 11th & 13th Jud

Dists 2021). Succession requires demonstrating the requisite familial relationship and co-residency with the tenant of record for a one- or two-year period prior to the tenant's vacatur, with the shorter period only applicable if the potential successor is disabled or elderly (*Matter of Jourdain v New York State Div. of Housing & Community Renewal*, 159 AD3d 41 [2d Dept 2018]). In the present case, it is undisputed that the tenant of record, Respondent's father, passed away in May 2021, and that Respondent is neither elderly nor disabled. As a result, the relevant window period for a succession analysis is May 2019-May 2021.

Since much of the proof of residence necessary to ascertain succession rights is typically within the exclusive custody and control of the party asserting the defense, courts routinely authorize discovery in such cases, and this matter was no exception (*see Quality & Ruskin Assocs. v. London*, 8 Misc 3d 102, 103 [App Term 2d Dept 2005]; *656 Realty, LLC v Blanco*, 32 Misc.3d 128 [App Term 1st Dept 2011]). This does not mean, however, that a claim for succession can only be established through documentary evidence. "Regulations providing for succession rights serve the important remedial purpose of preventing dislocation of long-term residents due to the vacatur of the head of household" and "should be liberally construed to carry out the reform intended and spread its beneficial effects as widely as possible" (*Matter of Jourdain v New York State Div. of Housing & Community Renewal*, 159 AD3d 41 [2d Dept 2018] [internal citation and quotation omitted]). Consistent with the remedial ambit of succession policies, where a respondent credibly testifies that she has resided with an immediate family for the relevant time period, a prima facie showing of succession can be made on testimony alone, shifting the burden to the landlord, who has typically had the benefit of documentary discovery and a deposition, to rebut the respondent's claim by presenting evidence that the respondent resided elsewhere during the window period (*see Tesco V, LLC v Madden*, 84

Misc 3d 134 [App Term, 2d Dept, 9th & 10th Jud Dists 2024]; *300 E 34th St. Co. v Habeeb*, 248 AD2d 50 [1st Dept 1997]). This is especially the case for pro se litigants, who are often “handicapped by [their] lack of legal knowledge as to evidentiary rules” and less in a position to submit evidence in admissible form (*530 Second Ave. Co. LLC v Zenker*, 54 Misc 3d 144 [App Term, 1st Dept, Ling-Cohan, J., dissenting]; *revd* 160AD3d 160 [1st Dept 2018]).

### THE TRIAL

Petitioner’s first witness was Jorge J. Bolanos, the former owner of the building. He testified that he and his wife owned the building via a two-member LLC from 2005 until 2023. Through his testimony Petitioner introduced the last rent-stabilized renewal lease at the unit for the now deceased tenant of record, Luis Bajana, from 2021-2023 with a monthly rent of \$1,288.33. Mr. Bolanos testified that when he acquired the building Luis Bajana was already living in the premises, originally with his wife and children, including his son, the Respondent. He testified that at some point, approximately seven years before he sold the building, Luis Bajana’s wife and children moved out and that Luis Bajana lived alone for the remainder of his life; that Luis Bajana had lung cancer and was very sick the last year years of his life; that he helped Luis Bajana secure public benefits to help pay his rent based on his being a disabled senior who lived alone, resulting in a tenant rental share of only \$232; that they were friends and would see each other monthly and that Luis Bajana lived alone with a part time nurse attendant; that Luis Bajana passed away in May 2021, at which time his ex-wife attempted to reclaim the apartment; that he told her she was not entitled to move back because she was not living there; that at this point she asked for two weeks to remove her things and ultimately took her belongings and moved out, but that during this time frame the Respondent, Jonathan Bajana, moved in and began living there; that the witness called the police, but they advised them to go

to housing court; that they ultimately were not able to bring a case before they sold the building because of COVID-19 related court closures; that the Respondent never signed a lease or paid rent; and that he is confident Luis Bajana lived alone for the two years before his death.

Petitioner’s second witness was Giovanni Bacarella, the property manager, whose testimony established Petitioner’s prima facie case through the submission of a certified deed, certified multiple dwelling registration, certified rent registration history, certified death certificate for Mr. Bajana listing his spouse Isabel Bajana as the informant with a different address in Jackson Heights, and authentication of the 10-day notice to quit. He further testified that Petitioner purchased the property in early February 2023, and that it has received no rent or use and occupancy since that time from anyone; that some tenants have complained about other unnamed individuals going in and out of the apartment, so he cannot be sure if anyone else lives there; and that nobody he has observed in the apartment appears to be disabled or elderly or in the military. The court found both of Petitioner’s witnesses to be credible and consistent in their testimony.

In addition to witness testimony, Petitioner introduced certified Department of Finance DRIE household composition records in which Luis Bajana represented that he lived alone during the relevant period.

Respondent called his mother Isabel Bajana as a witness. She testified that she and her husband Luis Bajana were married for 38 years; that they moved into the premises in 1998; that they never formally divorced; that Luis Bajana passed away in May 2021, after which she was told by the then-owners to move out in 10 days and accused of committing fraud; that they strong-armed her into moving out; that they accepted rental payments from her after her husband died; that while her husband was sick with pulmonary fibrosis he had a home attendant but she

would also take care of him; that the unit was not accessible in light of his mobility issues but the landlord refused to give him a first floor apartment, and his family would have to carry him down the stairs in a chair and it took all four of them; that only after the new owners took over were repairs made; that her husband was frequently hospitalized in the last few years of his life; that at some point while her husband was alive, the kids moved out but she stayed behind; that the kids maintained strong ties to the apartment and kept possessions there and visited regularly. When questioned by the court in an effort to elicit the core information related to Respondent's succession defense, the witness stated clearly that she and her husband lived alone in the apartment for the period of May 2019-2021. On cross-examination, Petitioner authenticated, via the witness's signature and admission, a series of leases at an apartment in Jackson Heights where the witness Ms. Bajana is listed as the tenant record starting in 2020, certified Con Edison records listing utility accounts in her name at this apartment since 2009, and a tenant composition form from 2020 where she listed herself as an occupant of the Jackson Heights apartment along with her children, including Jonathan Bajana, to which she responded she did this for the benefit of her daughter, who did not have good credit but was the primary tenant in Jackson Heights. Ms. Bajana conceded that the Jackson Heights address was listed on the death certificate. She further stated that her husband would spend time in Jackson Heights but lived primarily at the subject premises; and that she does not presently reside in the premises. The court found Respondent to be largely credible, if somewhat equivocal, as to the time she spent living with her husband at the subject apartment as opposed to Jackson Heights.

Respondent then called his sister, Johayra Macinas, who testified that she lived in the apartment from 2002 to 2016; that her father got sick with lung cancer in or around 2013 and had a hard time walking up and down the stairs with his oxygen tank; that the former owners refused

to relocate him to a more accessible unit; that, for some reason, Rose Bolanos, one of the former owners, pushed her mother to vacate right after her husband passed away and Ms. Macinas helped her move her items to storage in the panic that ensued; that the whole family spent a lot of time in the apartment helping her father and his home attendant while he was sick; that her father spent some time in the Jackson Heights apartment because it had an elevator and was more accessible but would go back and forth along with the rest of the family; that her brother, Jonathan Bajana, was back and forth regularly between both residences and helped take care of his father; that her mother is no longer living at the subject premises because she was coerced into moving by the former landlord. The court found the witness credible but non-specific as to her testimony related Respondent's residence during the relevant time frame.

Respondent then testified on his behalf and introduced two driver's licenses encompassing the relevant window period and listing the subject premises as his residence. He also introduced an ERAP approval letter reflecting an ERAP payment in Isabel Bajana's name for a period after his father died but prior to when the current owner's took possession of the premises in 2023.<sup>1</sup> Mr. Bajana testified that he helped take care of his father when he was sick; that he just wants to live in peace and is "doing this for my mom" who should have been entitled to the apartment; that he basically acted as his father's home attendant from 2017-2021 and cooked for him and cleaned him; that his mother always paid the rent religiously and was wrongfully forced out of the apartment right after her husband died; and that she is not safe in her current environment. Respondent also admitted into evidence a letter dated February 20,

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<sup>1</sup> Petitioner asserts these funds were returned and subpoenaed OTDA for documents substantiating this claim. The records were only belatedly located by the court at the conclusion of trial, and ultimately were not offered into evidence in part based on the court's determination that ERAP payments in Ms. Bajana's mother's name would have no bearing on Respondent's succession claim or for use and occupancy insofar as the payment covers a period prior to Petitioner's ownership, which it is not seeking.

2013, from Luis Bajana stating that he lives alone, along with a copy of a social security card, which Respondent claims the former owner must have forged given the differences in the signatures. While the court found Mr. Bajana to be sincere and credible as to his longstanding connections to the subject premises and his desire to help his mother, his testimony regarding his primary residence was less convincing and detailed.

On rebuttal, Petitioner called Efraim Velasquez, the tenant of Apartment 6 in the premises. The witness testified that he has lived his apartment for 43 years; that the Respondent used to live in the subject apartment with his mother and father as a child but moved out a number of years ago when Luis Bajana and his wife divorced and she and the kids moved out; that for a number of years including 2019-2021 Luis Bajana lived alone; that he and Luis Bajana socialized regularly and that the only other person he ever saw in the apartment was the health aide. On cross-examination when asked how he knows Luis Bajana lived alone, the witness stated this was based on his many conversations with Mr. Bajana who would complain about his family never visiting him and his own observations during their visits.<sup>2</sup> The court found the witness highly credible, with seemingly no personal interest in testifying.

## CONCLUSION

Upon due deliberation, the court finds that Respondent failed to meet his burden of establishing by a preponderance of the evidence a right to succeed to his father's rent-stabilized tenancy. Even granting Respondent significant allowances as an unrepresented litigant and affording his testimony and the driver's licenses he produced for the relevant period great

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<sup>2</sup> Although Respondent elicited this testimony during his cross-examination of the witness and did not object, as he is pro se litigant the court will disregard the portion of the witness's statements that constitute hearsay, which are of minimal evidentiary value in any event.

weight, the record overwhelmingly demonstrates that, while Respondent is an eligible family member as the son of the tenant of record, Respondent did not reside in the unit as his primary residence for the window period of May 2019-May 2021. In reaching this conclusion, the court affords particular weight to the entirely disinterested witnesses (*see Kardanis v Velis*, 90 AD2d 727, 727-728 [1st Dept 1982]), specifically the neighbor Mr. Velasquez and the testimony of Respondent's own mother, which was consistent with the testimony of the non-party former owner.

The court has no doubt that Respondent has a deep connection to the premises, his childhood home, nor does it doubt Respondent's laudable motivation, as described in his own words, in attempting to litigate this case to vindicate his mother's rights to the apartment, who may well have had a stronger succession claim than Respondent. Ultimately, however, rights under the Rent Stabilization Law and Code are created by statute not equity (*see 3505 Bway Owner LLC v McNeely*, 72 Misc 3d 1 [App Term, 1st Dept 2021]; *525 W. End Corp v Ringelheim*, 43 Misc 3d 3d 14 [App Term, 1st Dept 2014]), and Respondent has failed to demonstrate by a preponderance of the evidence a right to succeed to his father's tenancy (*see 320 W. 49 LLC v Conliffe*, 62 Misc 3d 143 [App Term, 1st Dept 2019]; *University Towers Assocs. v Mintz*, 15 Misc 3d 130 [App Term, 2d Dept, 2d & 11th Jud Dists 2007]). Nor does Respondent have standing to assert succession on behalf of his mother, who by her own testimony and that of her daughter's, no longer resides in the premises (*see Mia Terra Realty Corp. v Sloan*, 57 Misc 3d 141 [App Term, 1st Dept 2017]).

Accordingly, for the foregoing reasons Petitioner is awarded a final judgment of possession against all Respondents after trial. No further non-military status or dependency

affidavit is required prior to warrant requisition as to the non-appearing parties.<sup>3</sup> Execution of the warrant is stayed through June 30, 2025, for Mr. Bajana to vacate. The earliest execution date is July 1, 2025. Upon failure to vacate, a marshal's notice is to be served as per law.

In addition, Petitioner is entitled to a concomitant money judgment for reasonable use and occupancy, which it sought in the Petition and Notice of Petition and reiterated its request for orally during the trial for the period after it acquired the premises (*see Tzifil Realty Corp. v Mazrekaj*, 2025 NY Slip Op 025034 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists]). The tenant of record's last lease admitted into evidence established that the legal rent is presently \$1,288.33, which the court considers fair value under the circumstances (*see Warner v Lyon*, 63 Misc 3d 157 [App Term, 2d Dept, 2d, 11th & 13th Judt Dists 2019]). The testimony of Petitioner's agent, unrebutted by Respondent, demonstrated that no rent or use and occupancy has been paid since Petitioner acquired the building in February 2023, resulting in a total for the 25-month period of March 2023 through the commencement of trial in March 2025 of \$32,208.25.<sup>4</sup> Accordingly, Petitioner is awarded a money judgment against Jonathan Bajana for use and occupancy in the amount of \$32,208.25.

The parties are directed to pick up their exhibits and to make copies of any subpoenaed records within thirty-five days or they will be discarded or returned in accordance with the procedures set forth in DRP-185.

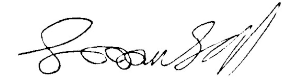
This constitutes the decision and order of the court.

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<sup>3</sup> Mr. Bajana stated he lives alone, however the court found there was sufficient testimony by Petitioner to warrant a default judgment against John Doe and Jane Doe.

<sup>4</sup> The court is excluding February 2023 from its calculation as Petitioner acquired the premises after the rent was due for this month and no testimony was offered to determine if anything was paid to the prior owner.

Dated: Queens, New York  
April 11, 2025



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Hon. Logan J. Schiff, J.H.C.