CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART F
----------X
PARK CITY, LLC

Index No. L&T 318146-22/QU

Petitioner-Landlord,

-against-

DECISION/ORDER AFTER TRIAL

HERIBERTO ROSADO, et al.

Respondents.
----------X

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

BACKGROUND AND PROCEDURAL HISTORY

Petitioner Park City, LLC (hereinafter "Petitioner") commenced this licensee holdover proceeding upon filing the Petition on November 22, 2022, seeking to recover possession of 61-35 98th Street, Unit 9J, Rego Park, New York 11374, from the remaining occupants following the death of the tenant of record, Maria Jackson, on January 19, 2021. Ms. Jackson was a non-purchasing, rent-stabilized tenant within a building now organized as a cooperative.

Respondent Heriberto Rosado (hereinafter "Respondent") interposed an answer, through counsel, on January 31, 2023, asserting a defense of succession rights. The answer alleges that Ms. Jackson was Respondent's mother, and that he co-occupied the premises with her prior to her death for well more than the two-year, statutory period required by the Rent Stabilization Code to succeed but for a period of excusable temporary absence occasioned by his incarceration in federal prison.

By decision and order entered March 19, 2024, Judge Clifton Nembhard granted Petitioner's motion for discovery. Petitioner subsequently moved to compel further discovery

and for discovery sanctions, including an order of preclusion, by motion dated September 3, 2024, alleging that Respondent had provided virtually no responsive documents and had not even demonstrated when he was incarcerated, making the relevant cohabitation period impossible to pinpoint. In opposition, Respondent submitted an affidavit in which he stated he was incarcerated from 2018-2020, while simultaneously attaching a letter from a Senior U.S. Probation Officer dated May 20, 2024, stating that Mr. Rosado was arrested "near his current residence at 61-35 98th Street, Apt. 9J, Rego Park, NY 11374" on April 5, 2018, and commenced supervised release on January 13, 2022 (NYSCEF 48).

By decision and order dated October 9, 2024, this court granted Petitioner's motion solely to the extent of requiring production of all outstanding discovery within 30 days and a "Jackson" affidavit detailing the efforts made to locate responsive documents (*see Jackson v City of New York*, 185 AD2d 768 [1st Dept 1992]). The court directed the production of documents for the period of January 1, 2016, through January 19, 2021, considering Respondent's admitted absence during at least a portion of the two-year period prior to the tenant of record's vacatur by virtue of her death, and the discrepancies in the date of incarceration, without making any ultimate findings as to the precise window period. The order further directed Respondent to sit for a deposition within 45 days of the completion of documentary discovery and authorized Petitioner to move for discovery sanctions in the event of non-compliance.

Following a conference on November 21, 2024, the parties agreed to transfer the proceeding to the trial part, by which time Respondent had submitted supplemental discovery responses and a satisfactory Jackson affidavit. During the appearance, Respondent's counsel represented to the court and opposing counsel that it had concluded all discovery production, and Petitioner's counsel in turn waived its right to a deposition in lieu of a speedy trial.

A trial was originally scheduled for April 2, 2025, and then adjourned to May 23, 2025. Prior to trial, the court signed a subpoena for Con Edison records in Respondent's name at two alternate residences, signed and filed by Petitioner's counsel on May 5, 2025 (NYSCEF 59). Also on May 5, 2025, Petitioner served a Notice to Admit seeking 41 admissions, including demands seeking admissions as to Respondent's residence during the window period.

The court conducted a three-day trial on May 23, June 12, and July 11, 2025, after which the parties submitted post-trial written summations on August 11, 2025.

NOTICES TO ADMIT

On May 23, 2025, at the outset of trial, Petitioner's counsel notified the court that Respondent had failed to respond to the Notice to Admit it had filed on May 5, 2025 (NYSCEF 56) within one day of trial as required by CPLR §§ 403 and 3123 and asked it to deem the requests admitted, including numerous requests to admit that Respondent resided at six alternative addresses during the window period (Requests 11-22). The court denied this request, cognizant that a Notice to Admit is not a vehicle for addressing the ultimate issues in dispute (*see American Bldrs. & Contrs. Supply Co., Inc. v Vinyl is Final, Inc.*, 222 AD3d 708 [2d Dept 2023]), and directed Respondent's counsel to confer with his client and to prepare responses prior to the start of trial.

Respondent's counsel, after speaking with his client, then returned some thirty minutes later and stated orally on the record that Respondent was admitting all the requests apart from Request 13-15 and 17, which were denied, Request 16, in which Respondent admitted only that he lived at one alternate residence for the period of 2012-2014, Request 19, in which Respondent admitted that he was released from prison on December 17, 2020, and Requests 20-22 relating to whether he is married to or resided with a woman named Sonia Pizarro during the window

period, which were denied. For reasons that are unclear, Respondent's counsel did not deny Requests 11-12, in which Petitioner sought admissions that Respondent lived at additional alternative addresses during the window period with his ex-wife Shamima Williams, and, if accepted as judicial admissions, would effectively preclude a defense of succession.

THE TRIAL RECORD

Petitioner proved its uncontested prima facie case upon the testimony of Jessica White, an employee of Petitioner since 2013, and through the admission of a certified deed, certified rent registration history listing Respondent's mother, Maria Jackson, as the tenant of record since at least 1984 when registrations became required, a certified multiple dwelling registration, an original proprietary lease and stock certificate reflecting that Petitioner was the sponsor of the conversion of the property to a cooperative in or around 1999, a series of rent-stabilized renewal leases with Ms. Jackson, including a last renewal for the period of November 1, 2020 through October 31, 2022, and a certified death certificate reflecting that Ms. Jackson died on January 19, 2021, at Long Island Jewish, Forest Hills, as reported by her daughter Ana Barzvi, who listed Ms. Jackson's address as the subject premises.

Ms. White testified that Petitioner is the holder of a number of unsold shares at the complex in which the subject apartment is located, and that it is her job to manage these units; that the contact information form on Ms. Jackson's leases only listed her daughter as the emergency contact; that, after she learned Ms. Jackson passed away, she authorized the service of a 10-day notice to vacate and the eviction Petition on Respondent; that over the years she has received repair requests on occasion from Ms. Jackson and her health aide but nobody else; and that Ms. Jackson never told her that she lived with anyone and at one unspecified point told her by phone that she lives alone. Finally, the witness authenticated a rent ledger reflecting

outstanding use and occupancy in the amount of $63,854.35, inclusive of air conditioning charges. The court granted Petitioner's motion to amend the Petition to date to seek use and occupancy owed through May 2025. During cross-examination, the witness stated that the Park City complex includes 5 buildings, 3 of which are in Forest Hills; that her office is in Manhattan; and that she was in the subject premises only once, at some point before the Covid-19 pandemic.

Respondent testified on his own behalf in rebuttal. He stated that he has lived in the premises, a 3-bedroom, 2-bathroom apartment, with his mother, the tenant of record, Maria Jackson, since they moved there in 1977 when he was 11 years old; that he left several times over the years, including, most recently from 2012-2014, when he got married; that his marriage did not work out and he went back home to live with his mother in or around 2014/2015 and has not moved out since that time; that he has not owned or lived in any other apartment since returning to the subject apartment; that his sister Ms. Barzvi lives in Central Islip and that nobody has lived in the apartment other than Respondent and his now deceased mother since 2015; that he did not work or have a driver's license, cell phone, bank accounts or credit cards from 2015-2018, the period prior to his incarceration; that he did get mail at the premises and was getting Medicaid and health benefits through New York State, which he provided to his attorney for purposes of discovery; and that he spoke with Jessica from Park City several times over the years including at once when he asked he if could be added to the lease but was told it could not be done. During cross-examination, Respondent stated he lived with his ex-spouse in Ozone Park at a home on North Conduit from 2012-2014 but that it did not work out and he went home to "mommy;" that he was separated but not legally divorced from his wife when he moved back to the subject premises following his release from prison; that his ex-wife attempted to serve him with divorce papers at the subject apartment 61-35 98th Street while he was

incarcerated and that his mother did not share his address in prison with his wife. During cross-examination, the court admitted into evidence a notarized "Jackson" affidavit Respondent signed describing the efforts made to look for responsive documents, as well as a parking agreement for a space located in Rego Park, where Respondent stated he parks his car near the premises, albeit with the insurance and registration listed under his current girlfriend Sonia Pizarro's name and listing her apartment as the address; that he purchased his car around 2021-2022; that he was incarcerated from April 5, 2018 until December 17, 2020; after which he was on home confinement with an ankle monitor and is why a letter from the Federal Bureau of Prisons states his release date was January 2022.

Respondent's next witness was Respondent's girlfriend, Sonia Pizarro. She stated that she has known Respondent since he was 11 years old; that they have been dating since 2021; and that Respondent has never lived with her.

Iris Pizarro testified next on Respondent's behalf. She stated that she has known Respondent for approximately thirty years; that she knew his mother; that she has been in their apartment many times for family gatherings, including for Respondent's and his mother's birthdays; that she was in the apartment in 2016 around Christmas, at which time Respondent was living there; that she never knew Respondent to have any other address; that from 2016 to 2018 she developed a friendship with Respondent's mother; that they were both devout Catholics, and she would go over and see her every chance she got; that Ms. Jackson was in a wheelchair but was otherwise functional; that Respondent would take good care of his mother, had friends in the building, and was known by everyone; that when she would enter the apartment there was a small vestibule, a terrace, and a dining room, and that Respondent lived in one of the smaller bedrooms and his mother lived in the larger bedroom; and that nobody else

lived there. During cross-examination, the witness stated that she was in the apartment approximately five times in 2016, five times in 2017, and less often, maybe just once in 2018, the year Respondent was incarcerated. She further stated that she was aware Respondent was married and that he lived briefly with his wife but that it "did not work out" and he moved in with his mother shortly thereafter. On re-direct, Ms. Pizarro testified that Respondent was a dedicated son to his mother, who was a devoted Catholic, and that she observed him frequently taking her to church in her wheelchair.

Respondent's next witness was Daniella Figueroa. She testified that Respondent is her childhood friend; that they have known each other since they were 15 or 16 years old; that she was aware Respondent was arrested; that she was at the subject apartment several times during the relevant period for functions including birthdays and Christmas; that she would stay 2-3 hours at the apartment and met Respondent's mother, who was sickly and frail, sometimes used a wheelchair, and had a home health aide; that Respondent told her he was living there and saw his bedroom; that she was there 2-3 times in 2016 and 2 times in 2017. The witness further testified that she understood Respondent always resided at the premises other than when he was incarcerated and that his marriage did not work out.

Respondent's next witness was Beverly Maribel Guzman, the daughter of Respondent's girlfriend Sonia Pizarro. She testified that during 2016 and 2017 she saw Respondent socially at many social events and at her mother's home; that afterwards she would drive him to his home at the subject premises; that she visited his room in the apartment, a 3-bedroom apartment; and that he had a bed and a couch in his room along with various sneakers and a dresser; and that she was in the apartment many times in 2016 and 2017.

Respondent's next witness was Tamikka Jones, a doorwoman for Park City Estates, the

legal owner of the subject premises. She testified that she has worked at the subject premises for 26 years; that she was initially the head of security for the multi-building complex but then was moved to the door of the subject building in approximately 2011 following a "union issue;" that she knows the Respondent "Eddie," who lived in the subject apartment, 9J, at the building with his mother until she passed away during the Covid-19 pandemic; that Respondent's mother would watch her granddaughter for an hour or two after she got off from day care but before the witness finished her shift in the calendar years 2016 and 2017 from approximately 315pm-4pm; that her when she picked up her daughter, Respondent was often there, and it was clear he was living in the apartment; that he would sometimes pop his head out of his bedroom to say hello; that this occurred 3-4 times a week; that she worked from 7am-4pm and would see Respondent regularly in the premises; that he was arrested in the building and that the police came and showed her his photograph prior to his arrest to look for him; and that she was stationed in the lobby building and would see all people coming and going. On cross-examination the witness stated that she was relieved of her duties as head of security for the entire complex in 2011 and started working as a doorwoman thereafter; that she took a leave of absence in or around 2014/2015 after she fell cleaning the stairs and was at one point fired but later reinstated following an arbitration; that she has no ill will towards her employer anymore, as the person who fired her no longer workers there; that her current employer was unhappy she was testifying, but she came pursuant to a subpoena and testified truthfully. On cross-examination, in response to a "yes or no" question, the witness testified that Respondent has been living the premises the entire time she has known him. While this statement was in contradiction to Respondent's assertion that he left from 2012-2014, when he was briefly married, the court does not ascribe significant weight to this discrepancy, as it was a response to a broad leading question

encompassing a 13-year period and is plausibly explained in part by the witness's leave of absence in 2014.

Respondent's next witness was Diane Deutsch-Keahey, a former neighbor in the adjacent apartment, unit 9K. She testified that she lives in Michigan but is presently visiting her elderly mother who is the primary tenant of 9K; that she lived in this apartment from September 2015 through June 2021 while employed at York College in Jamaica, Queens; that she moved there upon receiving a teaching position as an assistant professor of clinical laboratory science at a college approximately 20 minutes from the apartment; that she worked Mondays through Fridays and often on weekends and would typically leave at around 10am or 11am in the morning and return after 11pm; that she knew the Respondent "Eddie" as Maria Jackson's son; that they met in 2015; that she would go over to Ms. Jackson's apartment with her mother for parties and stay for 30-60 minutes; that Ms. Jackson introduced her to her son Eddie at some point in late 2015; that he was living in the apartment and sometimes invited her in; that she would also often see him late at night in the laundry room or taking out the garbage, often at least once or twice a week; that he had a key to the subject apartment, and she would see him exiting and entering; that her mother would often ask Eddie to come to their apartment to help around the house; and that she would see Respondent taking his mother to church in her wheelchair; and that she was not very close with Respondent but got to know him better after his mother passed away.

Respondent's final witness was Phillip Caldwell, a close friend of Respondent's. He testified that he visited the subject premises and observed Respondent living in the premises several times during the 2015-2017 period and described the layout of the apartment and Respondent's room. He further testified that Respondent was briefly married but definitively lived in the subject premises from at least the beginning of 2016 until he was arrested in 2018

and after his release.

At the conclusion of the trial Respondent attempted to offer uncertified copies of medical and pharmaceutical records, each with an original signature of a doctor or pharmacist purporting to be authentic documents, listing Respondent's address as the subject premises during the relevant time frame. Petitioner's counsel objected to the admission of these documents, both on the basis that they were unsworn and lacking the requisite foundation for admission as business records pursuant to CPLR §§ 3122-a and 4518, and considering their untimely production long after the conclusion of discovery. Respondent's counsel did not elect to call Respondent to explain the delay in the production or to bolster their authenticity, and the court reserved decision as to their admissibility, asking the parties to address this argument in their written post-trial summations. Upon due deliberation, the court holds that this evidence is not admissible. While the court has little reason to doubt the genuineness of the proffered documents, they lack the requisite sworn statements required to be self-authenticating business records pursuant to CPLR 3122-a and CPLR 4518, nor did Respondent provide an explanation for his failure to produce these documents to Petitioner during discovery or his lack of compliance with the CPLR 3122-a requirement that business records for which a party seeks admission without a foundational witness must be provided to the opposing party at least 30 days prior to trial (*see US Bank N.A. v 532 W. 187 Realty LLC*, 211 AD3d 596 [1st Dept 2022]; *see Louise v Hampton Jitney, Inc.*, 193 AD3d 514 [1st Dept 2021]). Therefore, under the circumstances presented, Petitioner would be unduly prejudiced by the last-minute consideration of this evidence and the objection to admission is sustained.

ANALYSIS AND DECISION

The sole determinative issue before the court is whether Respondent is entitled to succeed to his mother's rent-stabilized apartment pursuant to Rent Stabilization Code (9 NYCRR § 2523.5[b][1]).

A claim of succession rights is an affirmative defense to a holdover proceeding, which 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]; *Fieldbridge Assoc., LLC v Sanders*, [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]). In order to succeed, an occupant must establish both the requisite familial relationship with the tenant of record, which includes parents, children, grandparents, grandchildren and certain non-traditional family members, and co-residency for a two-year period prior to the tenant's vacatur, or for one year where the successor is disabled or elderly at the time of vacatur (*see Matter of Jourdain v New York State Div. of Housing & Community Renewal*, 159 AD3d 41 [2d Dept 2018]).

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 (*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 matter was no exception, as Respondent was directed to produce responsive documents in response to Petitioner discovery demands, and, ultimately, a Jackson affidavit describing in detail the efforts he made to locate missing items. The court also authorized and so-ordered third-party subpoenas, including a subpoena issued by Petitioner for Con Edison records at alternate residences.

That discovery is customary in succession cases does not mean that the admission of documentary evidence at trial is a *sin qua non* of a successful succession demonstration. Where

an occupant credibly testifies that they have resided with an immediate family member for the relevant time period, a prima facie showing of succession rights can be established on testimony alone, shifting the burden to the landlord to rebut the respondent's claim by presenting evidence that they lived elsewhere during the window period (*see Tesco V, LLC v Madden*, 84 Misc 3d 134 [App Term, 2d Dept, 9th & 10th Jud Dists 2024]; *530 Second Ave. Co. LLC v Zenker*, 160AD3d 160 [1st Dept 2018]); *300 E 34th St. Co. v Habeeb*, 248 AD2d 50 [1st Dept 1997]).

Here, it is undisputed that Respondent is an eligible family member as the son of the tenant of record, is neither disabled nor a senior citizen, and his mother, Maria Jackson, vacated by virtue of her death on January 19, 2021. As such, the only outstanding issue for purposes of the court's succession determination is whether Respondent resided with his mother during the relevant two-year window period. Normally this time frame would be January 19, 2019, to January 19, 2021, the two years immediately prior to vacatur. However, Respondent demonstrated that he was incarcerated from April 5, 2018, through December 17, 2020, encompassing a significant portion of the window period. Under these circumstances, considering that ["r]egulations 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*, 159 AD3d 41 [2d Dept 2018] [internal citation and quotation omitted]), Respondent's period of incarceration will be treated as an excusable temporary absence and excluded from the relevant inquiry period (*see G&L Holding Corp. v Gonzalez*, 43 Misc 3d 1206 [Civ Ct, New York Co 2014]; *Kelly Mgt LLC v Soltero*, 27 Misc 3d 984 [Civ Ct, Bronx Co 2010]; *cf. 528 W. 123rd St. LLC v Baptiste*, 59 Misc 3d 20 [App Term, 1st Dept 2018] [occupant failed to establish succession rights where he only

resided with the tenant of record from August 2012 to November 2013, prior to his death in May 2015, and would remain incarcerated until 2021]). As such, the window period for purposes of the court's succession analysis includes the two-years comprising May 4, 2016-April 5, 2018, prior to Respondent's incarceration, and December 18, 2020-January 19, 2021, after he was released and before his mother passed away.[1]

With respect to co-occupancy, Respondent demonstrated, by a preponderance of the evidence, that he resided with his mother during the relevant two-year period. In reaching this conclusion, the court finds that Respondent and his numerous third-party witnesses were all credible, specific in their testimony as to Respondent's primary residence since at least January 2016, and generally consistent across their testimony notwithstanding minor discrepancies that did little to diminish the cumulative weight of the evidence (*see Matter of Verille v Gardner*, 177 AD3d 1068 [3d Dept 2019]; *People v Silva*, 306 AD2d 424 [2d Dept 2003]). Furthermore, the court accords great weight to the testimony of the entirely disinterested witnesses (*see Kardanis v Velis*, 90 AD2d 727, 727-728 [1st Dept 1982]), specifically the doorwoman Ms. Jones and Respondent's former immediately-adjacent neighbor Ms. Deutsch-Keahey, neither of whom appears to have a personal relationship of significance with Respondent and where each provided detailed testimony placing Respondent in the subject apartment for living purposes on many occasions throughout the relevant time frame, both during the day and overnight. In the case of the doorwoman, she physically observed Respondent not only coming and going from the

[1] Respondent credibly testified that he was released under supervision to the apartment in 2020; however, even if the court found he was not released until January 13, 2022, after his mother's death, the window period would only cover only one additional month in 2016 and would not change the ultimate result as the court finds, for the reasons stated below, that Respondent has resided in the subject premises since at least January 2016.

premises on a nearly daily basis but living in the subject apartment by virtue of her regular visits to the unit to pick up her granddaughter from daycare. In the case of Respondent's neighbor, who no longer lives in the premises and had no apparent motive to give false testimony, Ms. Deutsch-Keahey testified to observing Respondent in the hallway and in his apartment late at night on numerous occasions when she returned from work, behavior that is consistent with residency.

While it is true that Respondent did not offer admissible documentary evidence in support of his succession claim, "the paucity of documentary evidence is not fatal to a valid succession claim where, as here, credible testimony evidence was presented at trial" (*Sy v Doe*, 4 Misc 3d 139 [App Term, 1st Dept 2004] *see also Tesco V, LLC v Madden*, 84 Misc 3d 134 [App Term, 2d Dept, 9th & 10th Jud Dists 2024]; *530 Second Ave. Co. LLC v Zenker*, 160AD3d 160 [1st Dept 2018]); *T & S Realty Corp v Lee*, 49 Misc 3d 140 [App Term, 1st Dept 2015]; *Lenoxville Assoc., L.P. v Downs*, 40 Misc 3d 138 [App Term, 1st Dept 2013]; *300 E 34th St. Co. v Habeeb*, 248 AD2d 50 [1st Dept 1997])]; *cf. 5539-181 & 182 Prospect Park W. Brooklyn, LLC v Caseres*, 74 Misc 3d 128 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022]; *320 W. 49 LLC v Conliffe*, 62 Misc. 3d 143 [App Term, 1st Dept 2018]).

Petitioner failed to rebut Respondent's prima facie showing, as the only evidence it offered to suggest Respondent lived elsewhere during the relevant period was the fact that he was legally married to a person with a different address, which is by no means dispositive of primary residence (*see Glenbriar Co. v. Lipsman*, 11 AD3d 352 [1st Dept 2004]), the fact that subsequent to the window period upon return from prison Respondent registered a car in his girlfriend's name, who lives at another address, which Respondent credibly explained during his testimony and is of no relevance in any event, the statement of Petitioner's employee that Respondent's mother at one point time told her, over the phone, that she lived alone, which the

court finds to be hearsay of minimal value notwithstanding the failure of Respondent's counsel failure to object (*see People v. Livingston*, 184 AD2d 529 [2d Dept.1992] [a trial judge should only consider competent evidence]; *Herstand & Co. v. Gallery: Gertrude Stein, Inc.*, 211 AD2d 77, 83 [1st Dept 1995]), and Respondent's mother's renewal leases, in which Respondent was not listed as the emergency contact in lieu of his sister, a fact of minimal probative value. Petitioner, despite having the benefit of discovery, likewise did not introduce the Con Edison records it subpoenaed or any other documents that might provide concrete proof that Respondent maintained an alternate residence during the window period. In sum, Petitioner did not rebut the overwhelming, credible testimonial evidence in support of Respondent's succession claim (*see Tesco V, LLC v Madden*, 84 Misc 3d 134 [App Term, 2d Dept, 9th & 10th Jud Dists 2024 *Sy v Doe*, 4 Misc 3d 139 [App Term, 1st Dept 2004]).

Nor does the fact that Respondent's counsel appears to have erroneously admitted orally, on the day of trial, in response to Petitioner's notice to admit, that Respondent resided at an alternative address during the window period compel a different conclusion. A notice to admit is a pre-trial vehicle that may be used "only to eliminate from contention those matters which are not in dispute in the litigation and which may be readily disposed of" and "is not to be employed to obtain information in lieu of other disclosure devices, or to compel admissions of fundamental and material issues or contested ultimate facts issues" (*American Bldrs. & Contrs. Supply Co., Inc. v Vinyl is Final, Inc.*, 222 AD3d 708 [2d Dept 2023]). As such, any notices seeking an admission that Respondent did not reside in the subject premises were facially improper and not appropriately the subject of a notice to admit. While Respondent's attorney could simply have rejected or even ignored these requests and asked the court to disregard them (*see Village of Malone v Stone Mtn. Prime LLC*, 204 AD3d 1148 [3d Dept 2022]), he instead consulted with his

client on the day of trial and orally denied the bulk of the requests to admit numerous alternate addressees during the inquiry period, while seemingly neglecting to deny requests 11-12. This "admission," which was not the result of a signed sworn statement by Respondent, was at most an unsworn, informal judicial admission under the circumstances and is not dispositive (*see HSBC Bank USA, N.A. v Fortini*, 189 AD3d 1373 [2d Dept 2020]; *1781 Riverside LLC v Castillo*, 36 Misc3d 126 [App Term, 1st Dept 2012]). Furthermore, an admission may be retracted (*see* CPLR 3123[b]; *Webb v. Tire & Brake Distrib., Inc.*, 13 A.D3d 835 [3d Dept 2004]), and in this case Respondent effectively did so by promptly testifying that he lived only at the subject premises during the relevant window period. Accordingly, this court accords Respondent's informal admission via his attorney that he lived elsewhere during the window period minimal evidentiary value, and it does not defeat Respondent's showing of entitlement to succession to his mother's rent-stabilized apartment.

As the record demonstrates that Respondent is a rent-stabilized successor entitled to a renewal lease, he is not a licensee as alleged in the Petition, and Petitioner failed to prove its entitlement to a judgment of possession. Accordingly, the Petition is hereby dismissed after trial. The clerk is directed to enter a judgment of dismissal in Respondent's favor.

This constitutes the decision and order of the court.

Dated: Queens, New York
September 22, 2025

Logan J Schiff

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

APPROVED
lschiff , 9/22/2025, 12:51:24 PM