

Petrolawicz v Ando Realty LLC

2025 NY Slip Op 33850(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 650815/2022

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LORI S. SATTLER PART 02M

Justice

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JOSEPH PETROLAWICZ, KATHRYN OLWELL,

Plaintiff,

- v -

ANDO REALTY LLC,

Defendant.

-----X

INDEX NO. 650815/2022

MOTION DATE 01/31/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for JUDGMENT - SUMMARY.

In this action alleging fraudulent deregulation and rent overcharge, Plaintiffs Joseph Petrolawicz and Kathryn Olwell (“Plaintiffs”) move for partial summary judgment on their claims. Defendant Ando Realty LLC (“Defendant”) opposes the motion and cross-moves for summary judgment in its favor.

Plaintiffs are tenants in Apartment 6WR23, also known as Apartment 23 (“Apartment”), a four-room apartment in a building located at 225 East 35th Street in Manhattan, owned by Defendant. Plaintiffs signed their original lease on February 23, 2021 for a one-year term with a rent of \$1,950 (NYSCEF Doc. No. 38). The lease provides “Apartment 23 of 225 East 35th Street is rent stabilized” (*id.* at 13), however it is undisputed that the lease was non-rent regulated. Plaintiffs signed another one-year lease the following year, on February 8, 2022, for the same monthly rent of \$1,950, but without the provision that the Apartment was rent stabilized (NYSCEF Doc. No. 39).

At some point during their tenancy Plaintiffs obtained the Apartment’s rental history from the New York State Division of Housing & Community Renewal (NYSCEF Doc. Nos. 27-

28). These records show that in 1984 a rent-controlled tenant named “J Kahn” resided in the Apartment paying a rent of \$100.58 per month. All subsequent years indicate: “Rent Control – Reg Not Required.” The building’s rent roll for 2011 provides that the Apartment is “Permanently Exempt” from rent regulation as of June 6, 2011 due to “High Rent Vacancy” and lists the rent as \$2,100.

Plaintiffs commenced this action 13 days after renewing their lease in 2022. They seek a declaration of the Apartment’s rent regulated status and assert causes of action for rent overcharge, fraudulent deregulation, and counsel fees (NYSCEF Doc. No. 22, “Complaint”). Plaintiffs contend the Apartment was improperly deregulated in 2011. They claim that “Defendant fails to prove any surrender from the last rent-controlled tenant” and maintains that Defendant never registered the Apartment as rent stabilized in order to be able to obtain the benefit of high-rent deregulation.

Defendant answered the Complaint and interposed a counterclaim for counsel fees (NYSCEF Doc. No. 24). According to Defendant, the rent-controlled tenant living in the Apartment, Jerry Kahn, died in September 2010 (NYSCEF Doc. No. 40, Vassos Affidavit, ¶ 8), at which point the Apartment automatically became decontrolled and subject to the Rent Stabilization Law. Thereafter, Defendant leased the Apartment to non-parties for a term commencing January 27, 2011 at a monthly rent of \$2,100 (NYSCEF Doc. No. 35). Defendant states that those tenants did not subsequently file a Fair Market Rent Appeal within the time permitted for doing so, as was their right. Because the rent exceeded the high-rent vacancy deregulation threshold applicable at the time, the Apartment was deregulated by law. Defendant maintains the leases Plaintiffs signed in 2021 and 2022 were fair market leases as permitted by

law and that Plaintiffs have been aware throughout their tenancy that the Apartment was not rent stabilized.

On a motion for summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Landlords are liable to complaining tenants of rent stabilized units when they are found to have overcharged above the authorized rent, and those tenants are permitted to use their apartment’s entire rental history to demonstrate an overcharge (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 [2020]).

Upon the death of a rent-controlled tenant resulting in an apartment’s vacancy, the apartment becomes subject to the Rent Stabilization Law automatically (*Liggett v Lew Realty LLC*, 42 NY3d 415, 418 [2024]; *Matter of Park v New York State Div. of Hous. & Community Renewal*, 150 AD3d 105, 109 [1st Dept 2017]). Thereafter, the law provides that the initial regulated rent “shall be the rent agreed to by the owner and tenant . . . subject to a tenant’s right to a Fair Market Rent Appeal to adjust such rent” (*Liggett*, 42 NY3d at 420, citing Rent Stabilization Code [“RSC”] § 2521.1[a]). The right to file a Fair Market Rent Appeal is held only by the first tenant of a rent stabilized apartment (*Liggett*, 42 NY3d at 420, citing RSC § 2522.3[a]). When notice of that tenant’s right to file, known as an RR-1 notice, is served, a tenant has 90 days to file, but even where no RR-1 notice is served, the law at the time provided

that the Fair Market Rent Appeal must have been filed no later than four years after an apartment's decontrol (*Park*, 150 AD3d at 114).

Additionally, per Rent Stabilization Law § 26-504.2(a) as it existed at the time, any housing accommodation which becomes vacant during the relevant period and whose legal regulated rent is \$2,000 or more per month becomes deregulated (*Altman v 285 W. Fourth LLC*, 31 NY3d 178, 184-185 [2018]). The law in effect provided that “when the first tenant after the vacancy of the rent-controlled tenant is charged a rent at or above the rent stabilization deregulation threshold, the apartment is exempt from all forms of rent regulation” (*3505 BWAY Owner LLC v McNelly*, 72 Misc3d 1, 3 [App Term 1st Dept 2020] citing *Matter of COB 3420 Broadway, LLC v Towns*, 156 AD3d 577 [2017]; DHCR Fact Sheet No. 6, Fair Market Rent Appeals, New York State Division of Housing and Community Renewal [2020] available at <http://www.nycourts.gov/reporter/webdocs/fact-sheet-06.pdf>).

Plaintiffs fail to present prima facie evidence to support their claim that Defendant fraudulently deregulated the Apartment. Rather, the evidence presented supports Defendant's position that the rent-controlled tenant of the Apartment died, that Defendant and the tenant thereafter agreed to a first rent that was above the threshold to trigger deregulation, and that that tenant did not file a Fair Market Rental Appeal in the four years following that agreement. Plaintiffs do not raise any triable issue of fact sufficient to require a trial in the action. Although they claim that Defendant continued to register the Apartment as rent controlled as late as 2021 (NYSCEF Doc. No. 20, Plaintiffs' Affirmation in Support, ¶ 15), the rent history Plaintiffs rely on to support this claim clearly states that registration is not required (NYSCEF Doc. No. 27). Likewise, their claim that the Apartment could not be deregulated because Defendant failed to initially register under the Rent Stabilization Law is unavailing. The Apartment automatically

became rent stabilized upon the rent-controlled tenant's death (*Liggett*, 42 NY3d at 418).

Although Defendant does not indicate whether it served the tenant thereafter with an RR-1 notice, that alone does not create a triable issue of fact, and it is undisputed that that tenant did not file a Fair Market Rent Appeal in the four-year period allotted.

Finally, Plaintiffs' contention that *Thurman v Sullivan Properties L.P.*, 226 AD3d 453 [1st Dept 2024] requires a different result is unsupported. In that decision, the Appellate Division, First Department affirmed the denial of a landlord's motion to dismiss, finding that although documentary evidence similar to that presented by Defendant here demonstrated that an apartment had been deregulated in the same way as the Apartment has, "the documents themselves do not utterly refute plaintiff's allegations that the apartment was wrongly or fraudulently removed from rent regulation" (*id.* at 453 citing *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). In this action, discovery has been completed, a Note of Issue has been filed, and Defendant seeks summary judgment pursuant to CPLR 3212, rather than dismissal per CPLR 3211. Under the summary judgment standard, Plaintiffs fail to raise a triable issue of fact as to whether the Apartment was fraudulently deregulated. Therefore, Plaintiffs' motion is denied, Defendant's motion is granted, and the Complaint is dismissed in its entirety.

Defendant's counterclaim for counsel fees is also granted to the extent of finding that Defendant is entitled to counsel fees and disbursements incurred in this action. Paragraph 19(A) of the parties' lease provides that Plaintiffs must reimburse Defendant for legal fees and disbursements "for defending lawsuits brought against Owner because of your actions" (NYSCEF Doc. No. 39). Defendant does not present evidence as to fees incurred, accordingly,

the issue of the amount of fees to be reimbursed shall be referred to a Special Referee to hear and report.

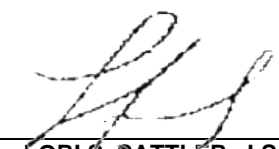
Accordingly, for the reasons set forth herein, it is hereby

ORDERED that Plaintiffs' motion for summary judgment on its Complaint is denied, Defendant's motion for summary judgment dismissing the Complaint is granted, and the Complaint is dismissed in its entirety; and it is further

ORDERED that Defendant's motion for summary judgment on its counterclaim for counsel fees is granted to the extent of finding that Defendant is entitled to reimbursement of its counsel fees and referring the matter to the Special Referee Part to hear and report; and it is further

ORDERED that Defendant shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's office (Room 119), who is directed to place the matter on the calendar of the Special Referee's Part for the earliest convenient date.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

<u>10/7/2025</u> DATE	 _____ LORI S. SATTLER, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE