

**141 MacDonough St. Hous. Dev. Fund Corp. v  
Wimbush**

2025 NY Slip Op 34593(U)

December 1, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. 306939/25

Judge: Elyssa O. Slutzky

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This opinion is uncorrected and not selected for official publication.

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

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141 MACDONOUGH STREET HOUSING  
DEVELOPMENT FUND CORPORATION  
Petitioner

Index No. 306939/25

-against-  
DIANE WIMBUSH a/k/a DIANE WINBUSH  
"JOHN DOE" & "JANE DOE"  
Respondents.  
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DECISION/ORDER

**Present: Hon. Elyssa O. Slutzky, JHC**

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Respondent’s Notice of Motion (Seq. 1) seeking an Order dismissing the Petition on the following grounds: failure to plead the regulatory status of the premises; notice of termination’s failure to state a cause of action for nonpayment of rent; holdover, premised upon nonpayment of rent, is contrary to public policy and impermissible when a breach of the warranty of habitability is alleged; the multiple dwelling registration was expired at the time of commencement of this proceeding; and the Notice of Petition fails to comply with 22 NYCRR §208.42(b).

**Papers Numbered**

Notice of Motion, Affirmation and Exhibits..... NYSCEF #10-12  
Affirmation in Opposition.....NYSCEF #13  
Affirmation in Reply and Exhibit.....NYSCEF #14-15

**Procedural and Factual History**

This proceeding seeks to recover possession of the premises located at 141 MacDonough Street, Apartment No. 1A, Brooklyn, New York 11216 (“premises”). Prior to commencing this proceeding, Petitioner served Respondent with a 90 Day-Notice of Termination (“notice”) requiring Respondent to vacate the premises by January 31, 2025. The notice states as follows:

“.....you are hereby required to quit, vacate and surrender possession of the Premises to the Landlord on or before January 31, 2025, that being more than 90 days after the service of this Notice upon you, and that upon your failure to quit, vacate and surrender possession thereof, Landlord will commence an action or proceeding in a court of competent jurisdiction to recover possession of the Premises. **Your tenancy is not being renewed. You are being terminated because you have failed to pay rent and the HDFC is placing the unit up for sale.**” [emphasis added]

The notice also attaches a document, pursuant to the Good Cause Eviction Law (“GCEL”), stating that the premises are not subject to the GCEL because:

the” Unit is on or within a housing accommodation owned as a condominium or cooperative, or unit is on or within a housing accommodation subject to an offering plan submitted to the office of the attorney general (exemption under subdivision 7 of section 214 of the Real Property Law).”

Despite service of the notice, Respondent failed to vacate, and Petitioner commenced this proceeding by Notice of Petition and Petition on March 2, 2025. Paragraph 6 of the Petition reads:

”The term for which the Premises were rented by the Tenant expired on January 31, 2025. At least 90 days before the expiration of the term, Tenant was served in the manner provided for by law with a notice in writing, a copy of which with proof of service is hereby annexed and made a part of this petition and that (a) Landlord elected to terminate or not renew the tenancy and (b) unless Tenant removed from the Premises on the day on which said term expired, Landlord would commence a summary proceeding under the statute to remove the Tenant therefore.”

Paragraph 12 of the Petition further reads:

“Under the terms of the rental agreement, Tenant agreed to pay rent for the Premises at the rate of \$1,000.00 plus costs and disbursements, including attorneys’ fees, which might be incurred by Petitioner in any action to enforce the Petitioner’s rights under the rental agreement.”

On August 12, 2025, counsel for Respondent appeared by Notice of Appearance. Counsel for Respondent now brings this pre-answer motion to dismiss. Petitioner opposes the motion in its entirety.

### **Respondent’s Claim of Right to Due Process**

Respondent argues, in part, that Petitioner, an HDFC, must have good cause to evict her from the premises and the mere expiration of her lease is not enough.” (Hudsonview Terrace v Maury, 100 Misc 2d 331 [AT 1<sup>st</sup> Dept 1979]); (1103 Franklin Avenue HDFC v Gould, 63 Misc3d 1235(A) [Civ Ct NY 2019]. Specifically, Respondent argues that as an HDFC, Petitioner, has such governmental entwinement to trigger her constitutional due process rights to require any eviction be based upon “cause”. (12 E. 11th St. HDFC v. Grimmer, 181 AD2d. 488 [AD 1<sup>st</sup> Dept 1992]). In the seminal case of Grimmett, supra., Petitioner,

was an HDFC, and the Court found the following factors constituted Petitioner's entwinement with the government so as to trigger Respondent's constitutional rights and require "cause" to evict her: the building was previously owned by the City of New York; the building was transferred to a not-for-profit housing cooperative under General Business Law §352-eeee and Private Housing Finance Law article XI; the certificate of incorporation stated its corporate purpose as "exclusively for the development of a housing project for persons of low income"; the certificate imposed restrictions and mandated it provide housing for low-income pursuant to Private Housing Finance Law, Article XI, §576; and HPD had regulatory control over the terms of the deed and certificate. Thus, Respondent argues that as the subject building herein is also mandated to be exclusively for the development of a housing project for persons of low income, she is entitled to due process and Petitioner must plead "cause" prior to any eviction. Respondent states that both the notice and Petition fail to state "cause" for her eviction, thus, this proceeding must be dismissed. (330 South Third St HDFC v Bitar, 906 NYS2d 839 [AT 2<sup>nd</sup> Dept 2010]).

In opposition, Petitioner argues there is no sufficient government entwinement to trigger Respondent's constitutional protections requiring "cause" to evict her. Petitioner argues that Respondent fails to prove any governmental entwinement as she does not demonstrate any coercive power or significant encouragement by the government. (Blum v Yaretsky, 457 US 991 [1982]). Petitioner further argues that Respondent fails to show government entwinement as she does not present evidence of many of the factors found in Grimmett and its progeny. Specifically, Petitioner argues that Respondent fails to prove that city approval is required prior to an eviction; that the city sets or approves rents; and that the city monitors the building's management. Moreover, Petitioner argues that the deed and security agreement, with the city, reflect that any significant governmental entwinement expired in 2015. In fact, according to Petitioner, the only ongoing government entwinement, as noted in the Deed, is the requirement that the building house persons of low income as defined under PHFL §576. Accordingly, Petitioner claims that the HDFC is a private, independent corporation which can evict Respondent based upon the expiration of her lease.

It is undisputed, that according to the Deed, between the City and State of New York and Petitioner, dated October 17, 1990, Petitioner covenants and agrees, that it, its successors and assigns have and hold the premises forever provided, *inter alia*, they "operate the premises solely as a housing project for persons or families of low income as defined in Section 576 of Article XI of the Private Housing Finance Law". Additionally, pursuant to the Board of Estimate of the City of New York, Petitioner was to be organized pursuant to Article XI for the purpose of developing a housing project for persons of low income. Clearly, this establishes governmental entwinement. Moreover, despite the declaration from Petitioner that it is not subject to a tax credit, the Board of Estimate of the City of New York granted Petitioner a partial tax exemption commencing on the date of the sale and

terminating on July 1, 2029<sup>1</sup>. Lastly, Petitioner is also entwined with the government by virtue of its receipt of rehabilitation funds from the federal section 17 program which contains certain restrictions. Based upon the foregoing, this Court finds the project is not purely private and consequently, Respondent's constitutional due process protections are triggered, requiring Petitioner to establish sufficient cause for an eviction.

**Petitioner States Cause for Respondent's Eviction**

Petitioner argues that even if this Court finds governmental entwinement triggering Respondent's constitutional due process rights, it has properly alleged such cause as Respondent's nonpayment of rent. Petitioner points to the notice which reads:

“Your tenancy is not being renewed. You are being terminated because you have failed to pay rent and the HDFC is placing the unit up for sale.”

According to Petitioner, this ground is not only legally cognizable but is, profoundly substantial since Respondent has allegedly failed to pay rent for approximately five years, resulting in arrears of more than \$53,000.00. Thus, according to Petitioner, Respondent's failure to meet such fundamental obligation of her tenancy is a proper basis for her termination. Petitioner avers that Respondent's claim that this proceeding must be dismissed based upon an impermissibly vague and conclusory notice is untenable since the notice properly apprises Respondent of the grounds upon which the proceeding is based, allowing her to prepare a defense. (Chinatown Apartments, Inc. v Chu Cho Lam, 51 NY2d 786 [1980]).

This Court rejects Petitioner's argument finding the notice does not state proper grounds for a holdover based upon the nonpayment of rent. It is black letter law that a defective predicate notice cannot be amended and requires a dismissal. (Chinatown Apartments Inc., supra.). In determining whether a predicate notice is adequate, the standard is one of “reasonableness in view of all attendant circumstances.” (Hughes v Lenox Hospital, 226 AD2d 4 [AD 1<sup>st</sup> Dept 2006]). Predicate notices must be clear and unequivocal to serve as a catalyst to terminate a leasehold. (Ellivkroy Realty Corp. v HDP 86 Sponsor Corp., 162 AD2d 238 [AD 1<sup>st</sup> Dept 2009]). Here, as recited above, the predicate notice reads as follows:

“Your tenancy is not being renewed.” “You are being terminated because you have failed to pay rent and the HDFC is placing the unit up for sale”.

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<sup>1</sup> Such exemption is reflected in paragraph 6 of the document entitled “Board of Estimate” Reel-2630;Page-1648.

This Court finds this proceeding analogous to RP Wimbledon Owner, LLC v Chisholm, 231 NYS3d 372 [Civ Ct NY 2025], where the court found that the predicate notice did not state sufficient cause under the Good Cause Eviction Law (“GCEL”) where it failed to include a good faith amount of the rent owed and the time frame for the alleged arrears. Here, there is even less detail than in RP Wimbledon. In RP Wimbledon the predicate notice listed the lump sum alleged outstanding however, no such lump sum is listed herein. Even arguendo, assuming the notice was proper, which it is not, the Petition, as recited above, makes no mention of Respondent’s alleged nonpayment of rent. Based upon the foregoing, this proceeding must be dismissed.

WHEREFORE it is

ORDERED that the Respondent’s motion is GRANTED and the Petition is DISMISSED, and it is further

ORDERED, this Court will not reach a decision on the other branches of the motion.

This constitutes the Decision/Order of this Court.

Dated: Brooklyn, New York  
December 1, 2025

  
Elyssa O. Slutzky, JHC

**Disposition Table Form**

December 1,  
2025  
DATE

  
Hon. Elyssa O. Slutzky, J.H.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>			
MOTION SEQ. #:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	JUDGMENT	<input type="checkbox"/>	SPS	<input type="checkbox"/>	DECISION RESERVED	<input type="checkbox"/>	SUBMITTED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	WITHDRAWN	<input type="checkbox"/>		<input type="checkbox"/>	DEFAULT	<input type="checkbox"/>	STAY CASE
	<input type="checkbox"/>	ADJOURNED: ALL PURPOSES	<input type="checkbox"/>		<input type="checkbox"/>	ADJOURNED: SUBMISSION	<input type="checkbox"/>	ADJOURNED: TRIAL
	<input type="checkbox"/>	ADJOURNED: HEARING	<input type="checkbox"/>		<input type="checkbox"/>	ADJOURNED: INQUEST	<input type="checkbox"/>	
	<input type="checkbox"/>	TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	GAL APPOINTMENT	<input type="checkbox"/>	

NOTES  
This proceeding is dismissed