724 E. 27th St. LLC v Fanor
2025 NY Slip Op 35244(U)
July 15, 2025
Civil Court of the City of New York, Kings County
Docket Number: Index No. L&T 073119-18
Judge: Karen May Bacdayan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

724 E. 27TH ST. LLC

Petitioner

-against-

EVANS FANOR BY GUARDIAN AD LITEM
BRENDA BROWN

Respondent.

L&T Index No.: 073119-18

Motion Seq No. 8

DECISION/ORDER

HON. KAREN MAY BACDAYAN

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc Nos: 76-99, 102-105.

Before the court is respondent's order to show cause to renew and reargue pursuant to CPLR 2221 (d) and (e). For the reasons that follow, that branch of respondent's order to show cause which is to reargue respondent's order to show cause dated April 18, 2025 (motion sequence 7) is granted, and, upon reargument, granted in part. That branch of respondent's order to show cause for renewal of respondent's order to show cause dated April 18, 2025 (motion sequence 7) is granted, and upon consideration of all the facts available to this court at this juncture, the court reaches the following decision for the following reasons.

BACKGROUND AND PROCEDURAL POSTURE

This nonpayment proceeding, commenced in 2018, settled on September 24, 2024, pursuant to a two-attorney stipulation of settlement, whereby petitioner was awarded a final possessory judgment and a money judgment of $80,000. (NYSCEF Doc No. 33, stipulation.) Petitioner represented the total arrears through September 30, 2024 to be $108,000 and "agree[d] that in consideration for the payment by [r]espondent of the $80,000 described in [p]aragraph 2 of this [s]tipulation, [p]etitioner unconditionally waives all other arrears alleged to be outstanding, a sum [p]etitioner represents is $28,000. If respondent defaults on its obligations under [p]aragraph 2 of this [s]tipulation, petitioner reserves its right to seek this $28,000." (*Id.* ¶ 8.) The warrant of eviction was to issue forthwith and be stayed through November 25, 2024, for

respondent to pay $80,000, plus October 2024 and November 2024 rent. Petitioner further agreed to "timely complete any forms necessary for the activation of CityFHEPS for Respondent and/or for the payment of arrears by CityFHEPS on behalf of Respondent." (*Id.* ¶ 5.)[1] Respondent, meanwhile, acknowledged their requirement under their lease to, *inter alia*, "avoid unreasonable and excessive usage of water in the subject premises . . . ." (*Id.* ¶ 6.)

The following decision and order requires review of respondent's two prior orders to show cause. Respondent's first order to show cause was granted to the extent of staying execution for four weeks to enable respondent to pay the $80,000 possessory judgment; respondent's second order to show cause was denied.

Respondent's First Order to Show Cause

In support of respondent's *first* order to show cause, respondent's counsel affirmed that respondent was eligible to be an APS client in 2002. (NYSCEF Doc No. 39, respondent's attorney's affirmation in support ¶ 4; *see also* NYSCEF Doc No. 16, July 15, 2022 APS notice of eligibility determination, finding respondent eligible.) However, APS subsequently closed respondent's case "due to lack of communication," although "[f]or the past [many] months, [r]espondent has participated in his case and demonstrated interest consistently in receiving support services." (NYSCEF Doc No. 39, respondent's attorney's affirmation in support ¶ 4; NYSCEF Doc No. 40, Fanor affirmation ¶¶ 6-7 ["I have remained in communication with APS for the past six months. Since September 2024, APS has made at least three home visits and I provided access. I have an upcoming psychiatric evaluation, which APS scheduled for February 21, 2025. I understand that I must remain engaged in the process so APS can make an informed decision."] [paragraph numbers omitted].) Specifically, APS agreed to re-assess respondent in October 2024, "which has been pending for almost four (4) months" and which "consequentially hampered [r]espondent's efforts to satisfy the judgment[.]" (NYSCEF Doc No. 39, respondent's attorney's affirmation in support ¶ 5.) Respondent's counsel's affirmation details their offices' outreach efforts to APS between November 2024 and early February 2025 to expedite a decision regarding the re-assessment. (*Id.* ¶¶ 27-58.) On the March 3, 2025 return date of the order to

[1] To be eligible for CityFHEPS, a tenant who lives in a residence that is subject to an eviction proceeding must either be in receipt of Adult Protective Services ("APS"), have previously resided in a Department of Homeless Services shelter, or will use CityFHEPS to preserve a rent-controlled apartment. 68 RCNY 10-03 (a) (6) (B). CityFHEPS provides eligibility for tenants who are not in an eviction proceeding, such as a veteran. *Id.* 10-03 (a) (6) (A).

show cause, the court issued an order staying execution through March 31, 2025, for payment of $80,000. (NYSCEF Doc No. 55, March 3, 2025 decision and order.) The order noted that a DSS attorney had informed the court on that date that APS determined respondent was eligible for APS. (*Id.* at 2.)

Respondent's Second Order to Show Cause

On April 17, 2025, respondent filed an order to show cause seeking vacatur of the judgment and warrant pursuant to Real Property Actions and Proceedings Law ("RPAPL") § 749 (3) for good cause, or in the alternative, to stay execution for good cause shown. (NYSCEF Doc No. 71, signed order to show cause [motion sequence 7].) On February 26, 2025, respondent was accepted as an APS client. (NYSCEF Doc No. 66, March 27, 2025 Client Notice of Eligibility Determination.) In support of the order to show cause, respondent attached numerous emails between respondent's counsel, petitioner's counsel, and APS, dated between March 5, 2025 and April 17, 2025, regarding petitioner's failure to provide APS with completed forms. (NYSCEF Doc Nos. 62-65, 67, 69.) Notably, on March 25, 2025, petitioner's counsel emailed respondent's counsel, stating petitioner "will not nor is obligated to complete any FHEPS paperwork at this stage of the game. Your office has allowed this case to linger and arrears to accumulate to enormous levels. For years. It is beyond reason that you should expect our cooperation now." (NYSCEF Doc No. 60.) Respondent's counsel contended that petitioner's "continued refusal to sign the forms has now placed [r]espondent on the brink of eviction, thereby constituting income discrimination, in violation of the New York City Human Rights Law[,]" and that "vacating the judgment and warrant of eviction is therefore an appropriate remedy, because [p]etitioner is engaging in income discrimination against [r]espondent, which has not only impeded [r]espondent's ability to satisfy the judgment, but contradicts [p]etitioner's purpose in maintaining this nonpayment case." (NYSCEF Doc No. 58, respondent's attorney's affirmation ¶¶ 4, 36.) Respondent's counsel argued petitioner lacked any legal basis for not signing the requisite forms, and that the fact that "the case has [been] pending for a long time" is "not a legal [basis] nor a valid basis to refuse signing HRA forms for a rent subsidy that will satisfy the central relief sought by [p]etitioner in the case." (*Id.* ¶ 32.) Thus, "[b]ecause [r]espondent cannot secure rental assistance without all forms completed," and petitioner "directly imped[ing] [r]espondent's ability to pay the judgment that [p]etitioner seeks," vacatur of the judgment and

warrant of eviction is warranted, as "[p]etitioner's continued pursuit to evict [r]espondent and obtain the monetary judgment lacks justification." (*Id.* ¶ 33.)

Petitioner did not file written opposition but submitted oral opposition on the May 6, 2025 return date of the order to show cause. Respondent's counsel alleged $123,000 in rental arrears was owed, that no rent has been paid since September 2018 other than a March 2022 ERAP payment, and that the court date marked the proceeding's 28th appearance. Petitioner's agent was sworn in and testified that faucets in the subject apartment "are constantly running and [the] water bill has increased by $200,000 over the last couple of years," and "that this, and the high amount of arrears which is reasonable to believe will not be paid seven years after the proceeding was commenced, is a nondiscriminatory motive for refusing to participate in the CityFHEPS application." (NYSCEF Doc No. 73, May 6, 2025 decision and order at 2.) In the decision now under review, the court found, *inter alia*, that petitioner was not acting in bad faith, and that the court had no jurisdiction to enjoin petitioner to submit documentation to APS. The court denied the order to show cause but stayed execution through May 31, 2025, for payment of $80,000 – an amount that excludes the accrued rent between October 2024 and March 2025 -- plus accrued rent for April 2025 and May 2025. (*Id.*)[2]

The Immediate Order to Show Cause

Now before the court is respondent's third order to show cause seeking an order (i) granting leave to renew respondent's order to show cause dated April 18, 2025 (motion sequence 7) pursuant to CPLR 2221 (e) (2), "because new correspondence from APS represents that [r]espondent's CityFHEPS application would be approved for arrears sought in this proceeding but for [p]etitioner's refusal to cooperate with the CityFHEPS application process"; and (ii) granting leave to reargue respondent's order to show cause dated April 18, 2025 (motion sequence 7) pursuant to CPLR 2221 (d) (2), and upon reargument, vacating the judgment and warrant under RPAPL 749, or in the alternative (iii) conditionally vacating the judgment and warrant under RPAPL 749 (3) "and the covenant of good faith and fair dealing implied in the parties' settlement stipulation, because "[p]etitioner's breach of that stipulation frustrated

---

[2] The September 24, 2024 stipulation of settlement is ambiguous as to whether the waiver of $28,000 was conditional. The stipulation states "[p]etitioner *unconditionally* waives all other arrears alleged to be outstanding, a sum [p]etitioner represents is $28,000 (emphasis added)." The next sentence, however, states that should respondent default on payment of $80,000, plus October 2024 and November 2024 rent, by November 25, 2024, "[p]etitioner reserves its right *to seek* this $28,000 (emphasis added)." NYSCEF Doc No. 33, stipulation of settlement ¶ 8.

[r]espondent's ability to secure the funds necessary to satisfy the judgment"; or alternatively, (iv) staying execution under RPAPL 749 (3) for good cause shown because of respondent's pending "one-shot deal" application to cover the judgment balance. (NYSCEF Doc No. 99, signed order to show cause [motion sequence 8].) In support, respondent's counsel argues respondent, "[a]s an APS client . . . is *per se* eligible for a CityFHEPS rent subsidy that would cover the remaining balance in full and satisfy the central relief sought in this case." (NYSCEF Doc No. 77, respondent's attorney's affirmation ¶ 4.) Respondent notes that it filed a pre-investigation complaint with the New York City Commission on Human Rights ("NYCCHR") due to petitioner's alleged unlawful income discrimination. (*Id.* ¶ 9; NYSCEF Doc No. 95, June 10, 2025 e-mail from respondent's counsel to NYCCHR.)

In support of *re-argument*, respondent argues the court misapprehended the law because "[p]etitioner's failure to sign the HRA forms is a human rights violation" and "[e]stablished precedent holds that [p]etitioner's continued refusal to sign the forms frustrated [r]espondent's ability to satisfy the judgment and constitutes income discrimination, in violation of the Administrative Code," thus petitioner's refusal "warrants vacating the judgment and warrant of eviction, and subsequently, dismissal." (NYSCEF Doc No. 77, respondent's attorney's affirmation ¶¶ 6, 73.) Respondent further argues that petitioner's purported concerns regarding respondent's water usage were accounted for in the stipulation of settlement, which "includes a provision that refers to 'water infiltration' in [r]espondent's apartment," and that the court overlooked that petitioner did not substantiate its allegations of respondent's misusage of water, which "do not justify breach of the stipulation, and are simply a pretext to income discrimination[.]" (*Id.* ¶ 52.) Respondent further argues that the court credited petitioner's oral testimony in the absence of written opposition to the order to show cause and without holding an evidentiary hearing on petitioner's purported non-discriminatory reason for refusing to participate in the CityFHEPS process. (*Id.* ¶¶ 77-80.)

Respondent bases its motion to *renew* on a May 21, 2025 e-mail from APS, whereby it was "confirmed . . . that [r]espondent's CityFHEPS case will be approved so long as the landlord completes the forms and [r]espondent meets eligibility requirements," and argues that "this newly discovered information was unavailable at the time of [r]espondent's prior motion," and that because respondent provided APS documents that show "he meets the income eligibility criteria, this unequivocal language show[s] that [p]etitioner's forms are required to secure a

CityFHEPS approval." (NYSCEF Doc No. 77, respondent's attorney's affirmation, ¶ 5; NYSCEF Doc No. 93, May 21, 2025 e-mail from APS Regional Director Evelyn Chevalier-Lui to respondent's counsel.) Due to petitioner's refusal to cooperate, respondent argues, the court should grant renewal, and upon renewal, vacate the judgment and warrant "because a CityFHEPS voucher is conditionally approved, subject to [p]etitioner's participation and [r]espondent's eligibility and [p]etitioner is continuing to refuse to cooperate." (NYSCEF Doc No. 77, respondent's attorney's affirmation ¶ 70.)

In the alternative, respondent argues the court should conditionally vacate the judgment and warrant, but does not delineate what specific steps petitioner should take to avoid such a conditional vacatur, other than "giving [p]etitioner one more opportunity t comply and sign the forms," but "should deny [p]etitioner the opportunity to be an obstacle to resolution and also proceed with an eviction." (*Id.* ¶¶ 90-101.) As a last alternative, respondent seeks a stay of execution on the warrant pursuant to RPAPL 743 (3), based on respondent's good faith efforts to secure arrears assistance to satisfy the judgment through both a CityFHEPS application and a "one-shot deal" application to pay arrears with assistance from the Human Resources Administration ("HRA"), and securing charitable assistance contributions totaling $12,000, along with respondent's own $4,724.33 in personal funds to put towards the judgment and/or future rent. (*Id.* ¶¶ 102-111; NYSCEF Doc No. 98, conditional contribution commitments and respondent's certified funds.)

Petitioner filed written opposition, arguing respondent has not provided any new facts to support a motion to renew the prior order to show cause. (NYSCEF Doc No. 102, petitioner's attorney's affirmation in opposition ¶ 36.) Petitioner also notes that the signed order to show cause states respondent was to bring proof of a conditional approval for all outstanding arrears. (*Id.* ¶ 16.) Petitioner argues that when the court issued its March 2025 decision and order, the court "inadvertently omitted the newly accrued rent from" October 2024, the month after the parties entered into the stipulation, through March 2025, and that petitioner subsequently informed the court in May 2025 of its "miscalculation of the rental arrears . . . by failing to include the rent accrued from October 2024 through March [2025]" when it issued the March 2025 decision and order. (*Id.* ¶¶ 9, 12-13.) Petitioner claims $124,899.90 is owed through June 2025. (*Id.* ¶ 17; NYSCEF Doc No. 103, rent ledger.) Petitioner argues none of respondent's supporting papers "articulate any headway made to secure" $124,899.90, "nor the original

judgment of $80,000.00," and reiterates that other than an ERAP award in September 2023, it has received no rent monies from respondent over the past seven years, and that respondent's secured conditional grants do not even equal eight percent of the arrears owed. (NYSCEF Doc No. 102, petitioner's attorney's affirmation in opposition ¶¶ 29-31.) Petitioner characterizes respondent's request to the NYCCHR as "frivolous" and a "manipulative tactic [] being utilized to avoid the consequences of, and "in retaliation for," the May 6, 2025 decision and order denying respondent's prior order to show cause. (*Id.* ¶ 14.)

ORAL ARGUMENT

At oral argument, respondent's counsel provided additional assurances that APS intended to approve respondent for CityFHEPS, and listed three documents needed from petitioner. Specifically, respondent's counsel produced a letter from APS Regional Director Evelyn Chevalier-Lui, dated June 30, 2025, to which petitioner did not object, NYSCEF Doc No. 104 (respondent's exhibit U), and which states in pertinent part:

> "Mr. Fanor has submitted all documentation necessary currently; however, in accordance with program guidelines, to move forward with the application and the arrears payment through June 2025 ($68,537.67), we also require the full cooperation of the landlord in providing all necessary documentation. *We are only awaiting the landlord's submission of the following forms: (1) w-9; (2) DSS-8f; (3) DSS-8k.*" (NYSCEF Doc No. 104, June 30, 2025 letter [emphasis added].)

Respondent's counsel argued that petitioner made an informed decision to enter into the September 24, 2024 stipulation of settlement *prior to respondent being found eligible for APS* and thus eligible for CityFHEPS. To demonstrate petitioner's informed consent to be bound by the mandatory language in the stipulation -- to wit, that "[p]etitioner shall timely complete any forms necessary for the activation of CityFHEPS for Respondent and/or for the payment of arrears by CityFHEPS on behalf of Respondent" -- respondent's counsel directed the court's attention to an e-mail from respondent's counsel to petitioner's counsel, dated September 20, 2024, just four days prior to the execution of the stipulation on September 24, 2024. (NYSCEF Doc No. 81.) In said email, respondent's counsel noted the case was back in court on September 24, 2024, and that their office was "working diligently to connect our client with APS for evaluation and approval for CityFHEPS," that APS conducted an assessment the week before the email was sent, that APS "agreed to expedite a determination on his case, given the extraordinary urgency of the matter," and that counsel "expect[ed] our client to be found eligible and given his

need for a voucher, approval for CityFHEPS." (*Id.*) Respondent's attorney framed the analysis as, first and foremost, a breach of contract issue, although they maintain that source of income discrimination is not a frivolous argument and not made to punish or manipulate petitioner.

Petitioner reiterated that the court had erred by "inadvertently" failing to include accrued rent from October 2024 through March 2025 in its March 3, 2025 decision and order. However, to the contrary, the March 3, 2025 decision was a considered and deliberate order. As it noted in the March 3, 2025 decision and order, petitioner sought the use and occupancy accruing after the stipulation of settlement ($10,345) to be *added to* the *possessory* judgment. During the conference on the record, the court speculated that to accord such relief, the court may need to vacate the current possessory and money judgment, and the warrant of eviction, and enter a new judgment, relief which petitioner had not specifically sought "perhaps for obvious reasons." Thus, the court severed the post-stipulation use and occupancy for a plenary proceeding. (NYSCEF Doc No. 55, March 3, 2025 decision and order; n 2, *supra.*)

Also, during oral argument on July 1, 2025, petitioner again advanced the allegation that respondent's use of an excessive amount of water is a non-discriminatory, good faith reason for its decision not to complete the forms requested by APS. Petitioner's agent, Moshe Rhine, stated on the record between 12:40 p.m. and 12:53 p.m., that "from a management perspective, it seems that it's worth it not to take the $80,000 in order to be able to cure the water problem." Rhine stated that the "only reason why we would push away $80,000 away . . . is because [they] feel that . . . if [they] don't stop the bleeding it will go on forever," and that they are "in the red on this close to [] over $250,000 if you add everything up," that he cannot obtain "regular access" to the apartment, and has "never been able to" gain access. When the court suggested that Rhine was implying that if respondent is evicted, then petitioner can deal with the alleged water issue, Rhine answered in the affirmative. (FTR 12:43 p.m.) Petitioner's attorney argued that the landlord has a "good reason . . . to forego [the money] and to get their apartment back. They are at a loss here and they will continue to be at a loss here because facts are not going to change. [They] are going to have the same problem situation in this apartment." (FTR 12:47.) Counsel also added that respondent "signed a stip. They knew what the consequence would be if [petitioner] didn't sign the paperwork or [] if [petitioner] didn't cooperate." (FTR 12:48 p.m.) Petitioner's attorney then stated that they had appeared 29 times on this case, and the legal fees were now in the neighborhood of $20,000. (FTR 12:51 p.m.)

DISCUSSION

Respondent's Motion to Reargue

The court agrees with respondent that it should not have taken the sworn testimony of petitioner in the absence of notice to the parties and an opportunity to cross-examine petitioner. The court further agrees that paragraphs 6 and 7 of the September 24, 2024 stipulation addressed the allegations of excessive water use and failure to provide access for repairs, and as written, the stipulation did not provide for enforceable relief flowing from the language of those paragraphs. The water use issue is more appropriately addressed in a nuisance holdover proceeding, and not in this proceeding for nonpayment of rent; and petitioner's attorney acknowledged during oral argument that it is procedurally possible to commence a holdover during the pendency of the instant nonpayment proceeding where it would have the opportunity to plead and prove its allegations of nuisance behavior. For the foregoing reasons, respondent's motion to reargue is granted. However, *at the time*, the court would not have reached a materially different result in the absence of more definitive evidence that respondent would be able to satisfy the possessory monetary judgment and subsequently accruing rent as limited by subsequent court orders.

Respondent's Motion to Renew

The court finds the letter from APS Regional Director Evelyn Chevalier-Lui -- upon which much of respondent's argument in favor of his motion to renew rests -- to be compelling, and that this change in circumstances warrants a different approach to the relief sought by respondent. Under the circumstances, the court finds that respondent has now provided enough credible evidence of immediately available payments to satisfy this court that if petitioner simply completes the specified forms as contemplated by paragraph 5 of the September 24, 2024 stipulation, the specific amount of monies set forth in the letter will be approved and processed.

"[I]t is the policy of New York City to prevent unlawful discrimination against prospective and existing tenants based on any lawful source of income." (*Dino Realty Corp. v Khan*, 46 Misc 3d 71, 73 [App Term, 2nd Dept. 2014].) The New York City Human Rights Law, Administrative Code of City of NY § 8-101 *et seq.*, defines "lawful source of income" as including, "any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, whether or not such income or credit is paid or attributed directly to a landlord." (Administrative Code of City of NY § 8-102.) Given that the overwhelming percentage of tenants in Housing Court depend on lawful sources of income such

as public assistance and government programs to pay their arrears -- and it is baked into the culture of Housing Court that both petitioners and respondents anticipate this reality when negotiating agreements to pay rent arrears to avoid eviction -- it would appear incumbent on Housing Court judges to weigh these factors and exercise their discretion to fashion appropriate equitable relief, without impermissibly exercising injunctive power. So, "what can the court do?" (*Patbru Realty Co., LLC v Bryant*, 81 Misc 3d 1249[A], 2024 NY Slip Op 50189[U], *3 [Civ Ct, Bronx County 2024, Ibrahim, J.])

In *Patbru Realty*, the landlord "agreed time and again to provide respondent with a lease in his name" in order to satisfy the requirements of the tenant's "one-shot deal" application with HRA to pay the stipulated rent arrears. (*Patbru Realty Co., LLC*, 2024 NY Slip Op 50189[U], *3.) The court noted that the landlord was aware that respondent would not be approved for arrears without a lease to guarantee housing stability for at least one year. (*Id.*) The landlord failed to comply without explanation. The court recognized that it had limited injunctive power to enjoin petitioner to sign and submit the forms,[3] but, citing to *Dino Realty Corp.*, *Monastery Manor v Donati*, 28 Misc 3d 133(A), 2010 NY Slip Op 51335(U) (App Term, 2d Dept, 9th & 10th Jud Dists 2010), and *116 Lenox Realty, LLC v Smith*, 61 Misc 3d 137(A), 2018 NY Slip Op 51562(U) (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018), the *Patbru* court determined that the "stipulation[] should be enforced." (*Id.*) Under the facts and circumstances of that case, the court held that staying the execution of the warrant was "not a sufficient penalty." (*Id.*) Consequently, the court vacated the judgment and warrant, and provided that the landlord could move "to reinstate the judgment and warrant upon a showing it has complied with its obligations under the stipulation." (*Patbru Realty Co., LLC*, 2024 NY Slip Op 50189[U], *3.) Here, as in *Patbru*, the stipulation must be enforced.

---

[3] It has been well-established that the Housing Court enjoys limited injunctive relief via CCA 110, and cannot enjoin petitioner to sign the specified forms. Indeed, "the Appellate Division of this Department has held that Civil Court lacks subject matter jurisdiction to grant such relief." (*728 Fulton St. LLC v Perch*, 63 Misc 3d 602, 606 [Civ Ct, Kings County 2019], citing *Cantalupo Const. Corp. v Richmond Terrace Corp.*, 96 AD2d 706, 707 [2d Dept 1995], and *Trump Vil. Section 3, Inc. v Sinrod*, 219 AD2d 590, 592 [2d Dept 1995]; *see also Jamaica Seven, LLC v Villa*, 67 Misc 3d 138[A], 2020 NY Slip Op 50630[U] (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2020] [holding Civil Court lacks jurisdiction to "direct landlord to offer a corrected renewal lease . . . which [amounts to] injunctive relief . . . ."])

The Appellate Cases Cited in *Patbru Realty Co., LLC v Bryant*

In *Dino Realty Corp.*, the parties settled a nonpayment proceeding whereby the landlord was awarded a final judgment for $4,904.26, $660 of which was paid the same day of the settlement, and execution of the warrant of eviction was stayed through April 15, 2013 for payment of the remaining balance plus April rent. The respondent moved to vacate the warrant, showing she made diligent efforts to pay the arrears, had a portion of the arrears, and that Catholic Charities would pay the remaining $3,410.58 once it received a W-9 form from the landlord, but that the landlord refused to submit the form. In opposition, the landlord argued the stipulation did not require him to provide the form. The court granted the motion to vacate the warrant, finding that the "landlord had breached the implied covenant of good faith and fair dealing and frustrated [the] tenant's efforts to timely comply with the stipulation." (*Dino Realty Corp.*, 46 Misc 3d at 72.) On appeal, the Appellate Term, Second Department affirmed, albeit for different reasons than those stated by the trial court. The court noted the propositions that "[t]he law abhors the forfeiture of leases," that "it is the policy of this State to prevent unnecessary evictions, particularly of rent-stabilized tenants," and that "it is the policy of New York City to prevent unlawful discrimination against prospective and existing tenants based on any lawful source of income." (*Id.*) The court found good cause was shown to vacate the stipulation, given that "the funds necessary to satisfy the judgment were available, from a lawful source of income, and as landlord, without proffering a reason for its refusal, refused to provide a W-9 form so that the funds could be released[.]" (*Id.* at 73.) Although affirming the order, the Appellate Term noted that "where appropriate, the Civil Court should fashion relief by conditionally vacating the warrant so as to give the landlord a further opportunity to provide the necessary form." (*Id.*)

In *Monastery Manor v Donati,* the landlord refused to provide a W-9 form in order for DSS to pay the total unpaid rent for the tenant, a Section 8 recipient, arguing the court lacked authority to compel him to do so and that because the tenant's son used illegal substances on the premises, the Section 8 contractual obligations were voided and alone warranted the tenant's eviction. (*Monastery Manor*, 2010 NY Slip Op 51335[U], *1.) The Appellate Term reversed the trial court's denial of the tenant's motion to vacate the warrant, finding such relief was appropriate "given [*inter alia*] the DSS commitment for the full amount of the arrears, and the fact that landlord is the recipient of federal project-based Section 8 assistance, the governing regulations of which provide that landlords 'shall not interfere with the efforts of tenants to

obtain rent subsidies or other public assistance.'" (*Id.* at *2 [internal citations omitted].) As for the landlord's allegations regarding the tenant's son, the court noted the petition did not contain any allegations regarding the son's occupancy of, or use of illegal substances at, the premises, and the landlord did not establish those allegations. (*Id.*)

In *116 Lenox Realty, LLC v Smith*, the parties' stipulation settling the nonpayment proceeding required the landlord to provide the tenant's Article 81 guardian with a W-9 form to help secure a Special Exit and Prevention Supplement ("SEPS") subsidy for respondent, which could then pay the respondent's arrears.[4] The lower court denied the Article 81 guardian's motion seeking to compel petitioner to provide the W-9 form. The Appellate Term reversed, citing to *Dino Realty Corp.* and *Monastery Manor* in finding that the stipulation "must be enforced," and granting the respondent's motion to the extent of staying execution of the warrant of eviction for 14 days following the landlord's provision to the Article 81 guardian of the requisite W-9 form. (*116 Lenox Realty LLC*, 2018 NY Slip Op 51562[U], *1.)

Other Housing Court Cases

Housing Court judges throughout New York City have enforced agreements to provide documentation to agencies in order to facilitate approval for rent arrears.

In *2720 LLC v White,* 35 Misc 3d 1236(A), 2012 NY Slip Op 51023(U) (Civ Ct, Bronx County 2012), the court had previously issued an order directing the landlord to provide a necessary W-9 form, in order for two charitable organizations to pay the remaining arrears of $1,008.82, but the landlord never provided the form, ostensibly because it wanted the issue of certain MCI charges resolved before providing the form. The court granted the tenant's subsequent motion to vacate the judgment and warrant, finding the landlord's refusal to be "violative of the spirit of the stipulations and orders in this proceeding, and the purpose of the proceeding itself." (*2720 LLC*, 2012 NY Slip Op 51023[U], *2.) The landlord commenced the nonpayment proceeding to collect the unpaid rent, the tenant was in a position to have all arrears paid but for the landlord refusing to provide the form to the two organizations, and it was "obvious" the landlord did not want to provide the form solely in order to frustrate the tenant's

---

[4] In 2018, several city-based rental subsidies, including SEPS, were consolidated into the CityFHEPS program. NYC Human Resources Administration, *CityFHEPS: What is CityFHEPS?*, available at https://www.nyc.gov/site/hra/help/cityfheps.page (last visited Jul. 1, 2025); Citizen Budget Commission, *CityFHEPS Hits $1 Billion*, Feb. 24, 2025, n 1, available at https://cbcny.org/research/cityfheps-hits-1-billion ("CITYFHEPS replaced LINC, SEPS, and FEPS.") (last visited July 1, 2025).

efforts to satisfy the judgment, "in direct contravention of the purpose of instituting this nonpayment summary proceeding in the first instance." (*Id.*) The court also found the landlord waived its right to those arrears and was permanently estopped from seeking them or seeking the tenant's eviction due to those arrears, as the tenant could not get it paid solely due to the landlord's refusal to cooperate. (*Id.* at *2-3.) The court also stated the landlord was arguably discriminating against the tenant based on lawful source of income. (*Id.* at *2 [citing to Administrative Code of City of NY § 8-107.5 [a] [1].)

In *Flushing QP Portfolio, II LLC v Williams*, NYLJ, Aug. 30, 2017 at 33, 2017 NYLJ LEXIS 2462 (Civ Ct, Queens County 2017), the parties settled the nonpayment proceeding whereby the petitioner was awarded a final judgment of possession for $14,673.70; upon payment by respondent, petitioner agreed to offer a lease in the respondents' name. Five months later, the court issued an order staying execution of the warrant for payment of $20,278.20. After the new owner moved to be substituted as petitioner, respondents cross-moved for, according to the court's order, either a vacatur of the original stipulation of settlement or an extension of time to pay the arrears, due to petitioner's failure to provide a W-9 form, which the respondents needed in order to secure rental assistance through SEPS. The court found the new owner was discriminating against the respondents by refusing the provide the W-9 form. Citing to *Dino Realty Corp.* for the proposition that "[s]uch discrimination is grounds to vacate a warrant of eviction," the court granted the cross-motion to the extent of staying execution for 10 days for petitioner to provide the W-9 form to respondent's counsel, then staying execution for an additional 35 days for payment of $22,271.50 as all rent owed to date. The court further ordered that if the W-9 form was not provided, the warrant of eviction would be vacated, and if respondents complied with the order to make the required payments, the court found they would be entitled to a lease as per the terms of the underlying settlement. (*Williams*, 2017 NYLJ LEXIS 2462, *3-4.)

In *Eubanks v Kinsler*, NYLJ, Jul. 1, 2020 at p 21, col 2, 2020 NYLJ LEXIS 1083 (Civ Ct, Kings County 2020), the tenant filed a motion seeking either vacatur of the stipulation of settlement, or a stay of execution of the warrant for the petitioner to sign CityFHEPS forms and then provide the respondent with more time to pay the arrears. The court found unavailing petitioner's argument that because they previously signed and submitted paperwork related to respondent's participation in the LINC program four years prior, they had no obligation to sign

additional forms for the respondent to participate in the CityFHEPS program after having fallen off the LINC program. (*Kinsler*, 2020 NYLJ LEXIS 1083, *4-6.) The court's order, dated April 23, 2020, granted the respondent's motion to the extent of providing petitioner until June 30, 2020, to provide the respondent with necessary documentation for respondent's CityFHEPS application, "plus any other forms requested by HRA," and staying execution of the warrant through August 30, 2020, for the respondent to pay arrears. The court also allowed for the respondent to move for further relief, including vacatur of the warrant and dismissal of the proceeding, if the petitioner failed to timely provide the necessary CityFHEPS or HRA forms. (*Id.* at *6-7.)

In *276-W71 LLC v G.S.*, the petitioner commenced the nonpayment proceeding in October 2019 and a *pro se* answer was filed in November 2019. The proceeding was adjourned numerous times between mid-November 2019 and mid-January 2023; a COVID-19 hardship declaration was filed in March 2021, and the court ordered in August 2022 that a guardian *ad litem* be appointed for the respondent. (NYSCEF Doc No. 1, case summary prior to conversion, in *276-W71 LLC*; NYSCEF Doc No. 6, decision/order appointing GAL, in *276-W71 LLC*.)[5] The proceeding did not settle until January 19, 2023, pursuant to a stipulation of settlement whereby respondent agreed to pay $18,150 as all rent owed through January 2023 by February 21, 2023. (NYSCEF Doc No. 38, Jan. 19, 2023 stipulation, in *276-W71 LLC*.) By order dated July 24, 2023, the court granted the petitioner's motion for a final judgment of $18,150 against the respondent. (NYSCEF Doc No. 107, Jul. 24, 2023 decision/order, in *276-W71 LLC*.) The court granted the respondent's first order to show cause seeking a stay of execution to the extent of staying execution for payment of $22,550 as all arrears owed through September 2023, and noted respondent's tenancy is statutorily protected under rent stabilization and that respondent had a pending "one-shot deal" application "that appears to have a reasonable likelihood of being approved." (NYSCEF Doc No. 121, Sept. 15, 2023 decision/order in *276-W71 LLC*.)

Respondent then moved for either vacatur of the warrant and judgment based on the petitioner's refusal to cooperate with the respondent's CityFHEPS application, or alternatively to stay execution of the warrant for same. (NYSCEF Doc No. 144, signed order to show cause, in

---

[5] The decision in *276-W71 LLC v G.S.*, 80 Misc 3d 216 (Civ Ct, NY County 2023) sanctioned the landlord's attorney for improperly negotiating a surrender with a court-appointed guardian *ad litem*'s ward outside the presence of his guardian. The litigation history respondent's motion to vacate the warrant or, in the alternative, to stay execution of the warrant, *supra*, is found in the NYSCEF court file.

276-W71 LLC.) From the respondent's counsel's moving papers, it appears that a HomeBase worker informed counsel that they could move forward with a CityFHEPS application for respondent, but petitioner chose not to participate in completing the application. On November 3, 2023, the court, citing to, *inter alia, Dino Realty Corp.*, found "no dispute that [p]etitioner has not participated in a process that would procure rent arrears from HRA," and found that those "circumstances present an equitable factor that gives rise to grounds to vacate a warrant of eviction." (NYSCEF Doc No. 161, Nov. 3, 2023 decision/order in *276-W71 LLC*.) The court granted the order to show cause to the extent of staying execution "until such date as [p]etitioner completes the CityFHEPS package that the Court has placed on NYSCEF and incorporates by reference, to be forwarded to [r]espondent's counsel by email, and then the execution of the warrant shall be stayed for thirty days thereafter for" the respondent to pay $23,650 as all rent owed through November 2023 (prior to crediting any HRA shelter allow payments received on/after September 15, 2023.) (*Id.*) After the respondent filed another order to show cause to stay execution of the warrant for processing of the CityFHEPS application, the court *sua sponte* joined HRA in January 2024; by February 28, 2024, the respondent was able to tender the full amount of rent (but not disputed surcharges) and the pending order to show cause was granted to the extent of vacating the judgment and warrant. (NYSCEF Doc No. 172, signed order to show cause, in *276-W71 LLC*; NYSCEF Doc No. 191, Jan. 8, 2024 decision/order *sua sponte* joining HRA, in *276-W71 LLC*; NYSCEF Doc No. 198, Feb. 28, 2024 decision/order vacating judgment and warrant, in *276-W71 LLC*.)

Application of the Appellate Law and Persuasive Authority to the Facts

The court notes that, as in *276-W71 LLC*, the age of this proceeding is misleading. While this proceeding was commenced in June 2018, it was adjourned several times for APS referrals and assessments. Then, in December 2018, the Supreme Court stayed all Housing Court proceedings pending the determination of an Article 78 proceeding challenging a dismissal by the Division of Housing and Community Renewal ("DHCR") of an overcharge complaint filed by respondent as untimely. The Supreme Court remanded the Article 78 proceeding to DHCR; the landlord appealed, and the Appellate Division dismissed the Article 78 proceeding. Due to the stay pending a DHCR determination, the Article 78 proceeding, the subsequent appeal, and the global Coronavirus pandemic which resulted in modifications to court procedures, including

an Emergency Rental Assistance Program automatic stay,[6] this proceeding did not appear on the calendar again until petitioner filed a motion to restore in the latter part of 2021. Respondent obtained counsel a few months later in March 2022. The proceeding ultimately was transferred to the trial part in June 2024, and the parties settled the proceeding on September 24, 2024, with petitioner obtaining a final possessory judgment and monetary judgment against respondent in the amount of $80,000.

Unlike *Dino Realty*, where petitioner made no promise to provide necessary forms – and the trial court, nevertheless, found that the landlord had breached the implied covenant of good faith and fair dealing and vacated the warrant -- petitioner here *specifically stipulated* to provide all necessary documentation in order for respondent to obtain approval for CityFHEPS. This binding imperative is *without limitation, temporal or otherwise*.[7] The language of the stipulation was negotiated by experienced attorneys. The fact that respondent's eligibility for CityFHEPS would only ripen *when* respondent became an APS client, as well as any uncertainty about APS procedures for CityFHEPS approval, were known to and could have been anticipated by petitioner prior to executing the stipulation. It was clearly expected by the parties that a majority of the arrears would come from the CityFHEPS program. For petitioner to renege on its unequivocal agreement at this juncture would not only "violate acceptable canons of landlord and tenant law which require strict construction of language in written instruments that could work a forfeiture," *Lerner v Johnson*, 167 AD2d 372, 375 (2d Dept 1990), but would also result in respondent's certain eviction. The stipulation must be enforced.

Here, petitioner is not solely responsible for respondent's default under the September 24, 2024 stipulation, as respondent was not eligible for APS services until February 26, 2025, and,

---

[6] Individuals approved for ERAP "may receive [u]p to 12 months of rental arrears payments for rents accrued on or after March 13, 2020[;] [u]p to 3 months of additional rental assistance if the household is expected to spend 30 percent or more of their gross monthly income to pay for rent[;] and [u]p to 12 months of electric or gas utility arrears payments for arrears that have accrued on or after March 13, 2020." New York State Office of Temporary and Disability Assistance, *Emergency Rental Assistance Program*, available at https://otda.ny.gov/programs/emergency-rental-assistance/ (last visited July 14, 2025).

[7] *See 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 (2002) ("In New York, all contracts imply a covenant of good faith and fair dealing in the course of performance. This covenant embraces a pledge that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. {T]he duties of good faith . . . encompass any promises which a reasonable person in the position of the promisee would be justified in understanding were included.")

thus, not eligible for CityFHEPS at the expiration of the stay for which the stipulation provided. This four-month delay is more aptly, and quite typically, attributed to APS eligibility screening procedures. However, petitioner *has* easily and without hesitation provided a reason to refuse to complete the necessary forms, and the court does not doubt petitioner's honesty; nevertheless, while it may seem logical to petitioner that its unproven allegations of excessive water use should be considered a nondiscriminatory motive for refusing to complete the CityFHEPS paperwork, petitioner's refusal is unlawful and has devastating consequences for respondent. Petitioner has other procedurally proper remedies if it seeks to plead and prove those allegations.[8] (*See Monastery Manor,* 2010 NY Slip Op 51335[U], at *2 [rejecting on appeal landlord's argument that tenant's son alleged use of illegal substances in the apartment was cause to refuse to provide W-9 form and noting that, as herein, the petition comprised no such allegation, and same had not been proven].)

"[A] reasonable likelihood of being approved" was sufficient for the court in *276-W71, LLC*, *supra*, to indefinitely stay execution of the warrant obtained by a recalcitrant landlord "until such date as [p]etitioner completes the CityFHEPS package. (NYSCEF Doc No. 121, Sept. 15, 2023 decision/order in *276-W71 LLC*; NYSCEF Doc No. 161, Nov. 3, 2023 decision/order in *276-W71 LLC*.) In this court's estimation, respondent's newly obtained APS letter provides *even greater assurance* than that provided to the court in *276-W71, LLC*.

CONCLUSION

The court finds that petitioner has placed respondent at risk of eviction by frustrating respondent's efforts to satisfy the arrears. RPAPL 749 (3), which was amended in 2019, now states in relevant part: Petitioner has prevented respondent from obtaining funding to which he is entitled that will could prevent his displacement, thus positioning respondent perilously close to "one of the harshest decrees known to the law—eviction from one's home." (*Braschi v Stahl*, 74 NY2d 201, 215 [1989] [Bellacosa, J., concurring].)

The court finds that petitioner has breached the implied covenant of good faith and fair dealing by withholding the necessary forms, a promise, reduced to a court order – which petitioner is bound to keep. It is respondent who has demonstrated sufficient efforts and

[8] Petitioner's attorney stated during oral argument that a predicate notice of termination for a holdover proceeding was either being prepared or had already been served.

sufficient ability to satisfy the rent due to allow this court to fashion the following equitable relief.

Currently, respondent owes $85,264.67 through June 2025 (not including the severed amounts accrued between October 2024 and March 2025), and July's rent has accrued in the amount of $1,754.89. (See NYSCEF Doc No. 105, chart prepared by respondent's attorney.)

Accordingly it is hereby

ORDERED **the warrant of eviction is stayed as set forth below** to enable petitioner to provide the following forms, fully completed and timely signed, to respondent's attorney**: (1) W-9; (2) DSS-8f; (3) DSS-8k; and (4) a current rent ledger**, as it is now July 2025. **These four items must be provided to respondent's attorney no later than July 25, 2025**; and it is further

ORDERED that petitioner **must upload the signed forms and the current rent ledger, redacted if necessary, to NYSCEF with proof of provision to respondent's attorney AND to APS dated on or before July 25, 2025**, whether that proof is an email, respondent's attorney's signature, the APS Regional Director's stamp/signature, or some other discernible evidence of delivery; and it is further

ORDERED that **if petitioner *does* timely comply with this order, respondent must upload proof of the availability of $85,264.67 representing all rent due through June 2025 PLUS July and August 2025 rent by August 31, 2025**; and it is further

ORDERED that if petitioner ***does not* timely comply, the warrant shall be stayed *until* 30 days after proof of petitioner's compliance is uploaded to NYSCEF to enable respondent to pay all $85,264.67 as all rent due through June 2025 PLUS any arrears that have accrued through the 30th day after petitioner's compliance;** and it is further

ORDERED that should respondent default on any of the terms of this order, petitioner may reserve the marshal's notice by mail; and it is further

ORDERED that petitioner is -- pursuant to the September 24, 2025 so-ordered, two attorney stipulation -- under a continuing obligation to "timely complete any forms necessary for the activation of CityFHEPS for Respondent and/or for the payment of arrears by CityFHEPS on behalf of [r]espondent."

This constitutes the decision and order of the Court.

Dated: July 15, 2025
Brooklyn, NY

So Ordered:

HON. KAREN MAY BACDAYAN

Hon. Karen May Bacdayan